TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. ~~902.~~ ~~383~~ 242

RICHARD FRANCIS, WILLIAM T. LEVINE, C. W. READ, WILLIAM F. HIGGINS, JOHN McLAUGHLIN, JOSEPH SMITH, JOHN ERVINE ET ALS.,

APPELLANTS,

vs.

JAMES M. FLINN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED JULY 14, 1883.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 902.

RICHARD FRANCIS, WILLIAM T. LEVINE, C. W. READ, WILLIAM F. HIGGINS, JOHN McLAUGHLIN, JOSEPH SMITH, JOHN ERVINE ET ALS.,

APPELLANTS,

vs.

JAMES M. FLINN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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UNITED STATES OF AMERICA.

CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE FIFTH JUDICIAL CIRCUIT AND EASTERN DISTRICT OF LOUISIANA.

JAMES M. FLINN
vs.
RICHARD FRANCIS ET ALS. } No. 9282

Messrs. Joseph P. Hornor, A. G. Brice, and F. W. Baker, for James M. Flinn, complainant, Appellee.

J. R. Beckwith, Esq., for Richard Francis *et als.*, defendants, Appellants.

APPEAL.

Returnable to the Supreme Court of the United States on the second Monday of October, A. D. 1883.

1 UNITED STATES OF AMERICA.

Circuit Court of the United States for the Fifth Judicial Circuit and Eastern District of Louisiana.

JAMES M. FLINN
versus
RICHARD FRANCIS *et al.* } No. 9282.

Bill of Complaint and Order. Filed January 28th, 1881.

To the hon. the judge of the United States Circuit Court for the Fifth Circuit and District of Louisiana.

James M. Flinn, a citizen of the State of Florida, brings this, his bill, against Richard Francis, individually, and as agent for others, and W. T. Levine, C. W. Read, Wm. F. Higgins, John McLaughlin, Joseph Smith, John Ervine, R. M. Wilson,
2 A. A. Douglass, Charles Dennis, Philip Wuertz, Thomas D. Lewis, D. B. Morgan, Joseph Preble, Robt. H. Tilford, Sr., Gustave Gersdorf, Francis Bailey, Oscar Schultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, Wm. E. Pendleton, Henry Buttcher, Benjamin S. Ames, Peter Douhan, Bernard Michell, Francis Lory, Chas. S. Clark, E. C. Bannon, Francis Williams, N. L. Cloutman per Jos. Preble, Thos. Wilson, Robt. Wilson, Jas. W. Lyons, Jas. Redman, Wm. B. Turley, George Osgood, all citizens of the State of Louisiana.

And thereupon your orator complains and says that he is one-eighth owner of the steam pilot boat, Mary Lee, vessel decked, and over fifty tons burden; that said interest exceeds the value of five thousand dollars; that said vessel, Mary Lee, has been built, and is manned and equipped, and in all respects fitted for the purposes of a pilot boat, and has been for some months passed, and is now engaged in the business of a pilot boat at South Pass, at and through said Pass, and known as the jetties, at one of the mouths of the Mississippi river; that said South Pass, or channel, is, and has been, since the beginning of the construction of the jetties, under the control of the Secretary of War, by act of Congress approved June June 1st, 1874.

Your orator further shows that, under the acts of Congress, the Government of the United States has caused to be removed the obstructions in said channel, known as the Bar, and that said
3 Pass is subject to no other rules, regulations, or laws than such as have been passed by Congress and those declared by the Secretary of War of the United States, in pursuance of the authority vested in him by the acts of Congress aforesaid, and such laws as Congress may hereafter make relative to said channel.

Now your orator further declares, that in carrying on the busi-

ness of piloting with the "Mary Lee," he has in all respects conformed to said laws, rules and regulations; that the captain of said "Mary Lee," to wit: George A. Sheldon, and the other officers in charge of said vessel, are duly licensed and commissioned under and according to the laws of the United States, and that Pliny Cox and George A. Falconi, and Hiram Follett, on board as branch pilots, and who act as pilots on vessels inward and outward bound to and from and through the South Pass, and as part owners of said Mary Lee, are duly licensed under and according to laws of the State of Louisiana, as branch pilots for the port of New Orleans, and, as such, entitled to pilot vessels from sea to and into the Mississippi river, and from said river to sea.

And your orator further shows, that under the laws of the United States passed relative to said channel know as the Jetties, and by virtue of the Constitution and the Acts of Congress relative to vessels and steamers of the character of the Mary Lee, your orator has the right, as owner, to have the officers, to wit:
the captain, G. A. Sheldon, and Pliny Cox, Geo. A. Fal-
4 coni, and Hiram Follett, pilots, protected in the discharge of their duties, and the vessel Mary Lee protected in the occupation of piloting in and out through said channel known as the Jetties to and from sea; and your orator has a right to have a decree recognizing his rights to render services as a pilot-boat to all vessels to or from sea through said South Pass or channel, when any one of said branch pilots employed by complainant shall be on board of such vessel or vessels inward or outward bound and acting as branch pilots and on board of such vessels inward or outward bound and drawing more than twelve feet of water, and that any law made by the State of Louisiana, or any rules or regulations made by the confederates, defendants herein, in violation of or in contravention of, or obnoxious to, the laws of Congress of the United States and the regulations made by the Secretary of War of the United States, are null and void, and a decree should be rendered in favor of your orator, declaring all such laws, rules and regulations unconstitutional, null and void, in conflict with the Acts of Congress, and such regulations made in pursuance thereof.

Your orator further shows and complains to your honors, that the said Richard Francis, W. T. Levine, C. W. Read, Wm. F. Higgins, John McLaughlin, Joseph Smith, John Ervine, R. M. Wilson, A.
A. Douglass, Charles Dennis, Philip Wuertz, Thos. D. Lewis,
5 D. B. Morgan, Jos. Preble, Robt. H. Tilford, Sr., Gustave Gersdorf, Francis Bailey, Oscar Schultz, Walter Jarvis, Thos. Craig, John F. Gersdorf, Edward Breen, John Ahern, Wm. E. Pendleton, Henry Buttcher, Benjamin A. Ames, Peter Douhan, Bernard Michell, Francis Lory, Chas. S. Clark, E. C. Bannon,

Francis Williams, N. L. Cloutman per Jos. Preble, Thos. Wilson, Jas. W. Lyons per A. A. Douglass, Jas. Redman, William B. Furley; have combined and confederated together and formed a conspiracy for the purpose of destroying complainant's business and his property; that they have, by publications in the newspapers, and by divers and sundry suits, and by injunctions, and by various other and divers ways contrived, and now are contriving, how to wrong and injure your orator in his business, and in his property, and they refuse to comply with your orator's request to desist from their acts of wrong, and permit your orator to peacefully follow his lawful business, although requested often so to do. And to this end they have instituted suits against J. W. Black, Geo. A. Sheldon, Hiram Follett, Pliny Cox, Geo. A. Falconi, all of whom are part owners of the Mary Lee, the last three of whom are branch pilots for the port of New Orleans, for the above purpose, are preventing your orator from continuing his said business and to prevent the pilot-boat Mary Lee from being used as pilot-boat aforesaid.

Your orator specially refers to suits No. 9111 of this honorable court, entitled R. W. Francis vs. J. W. Black et al.; No.
6 —— of the docket of the Civil District Court, entitled George Osgood vs. J. W. Black et al.; same court, State ex rel. Attorney-General vs. Hiram Follet; State ex rel. vs. Pliny Cox; Board of Administrators of the Charity Hospital of N. O. vs. Capt. H. Geston, master of steamship By-well Costto, and her master and owners; Richard Francis et als. vs. Geo. A. Falconi. No. 2142 of the Civil District Court Parish of Orleans; all of which said suits are instituted and provoked in the name of or at the instance of said defendants, and that said suits show the animus of said conspirators to be to destroy your orator's business, deprive him of his rights, and to destroy his property; to this end they have alleged in these suits:

1st. That John W. Black and others, co-owners with him in the steamer Mary Lee, are towing vessels through the jetties to and from the sea, drawing over twelve feet of water, without having a branch pilot of the port of New Orleans on said vessel.

2d. That Hiram Follet and Pliny Cox, branch pilots of the port of New Orleans, and duly commissioned as such, are not such branch pilots, but intruders into an office.

3d. They charge that Geo. A. Falconi, although a branch pilot, has no right to pilot vessels through said jetties, in the service of any of the owners or agents of the said Mary Lee, because some agreement or contract entered into by said conspirators, whereby it is assumed that said Falconi bound himself to refuse to go
7 on board and act as pilot on any ship or vessel when called by signal or otherwise, where against the interest of the

other conspirators, especially if it would advance the interest of the pilot boat Mary Lee, her owners, or agents.

Your orator further complains, that for the purpose of carrying out said conspiracy, and with the design to injure your orator, said defendants did, on the 29th of May, 1879, form themselves into a pretended partnership, and bound themselves by penal clauses, not to do any service as branch pilots of the port of New Orleans with any person other than those mentioned in that confederation, and to do no such business in conjunction with others against the designs of said conspiracy. That said contract is one made in violation of law, against good morals, and formed for the purpose of combining and forming, against your orator and *its* co-owners, a conspiracy.

Your orator further avers that the acts and doings of said parties, as hereinbefore set forth, are intended and continued to injure and harass your orator, and make his property worthless, and will have such effect unless restrained by the power of court; all of which acts and doings and pretenses of the said defendants *and* contrary to equity and good conscience and tend to the manifest injury and oppression of your orator in the premises.

In consideration whereof, and for as much as your orator is remediless in the premises at and by the strict rules of the
8 common law and at and by the strict rules of the law as administered in the courts of Louisiana, and is relievable only in a court of equity, where matters of this nature are properly cognizable and alone relievable, and that to the end that your orator may be protected pending these proceedings, he may have a remedial writ of injunction to issue to prevent the waste and destruction of his property and destruction of his business, and after due proceedings, said injunction be made perpetual, and defendants be perpetually injoined.

Wherefore, your orator prays leave to file this bill; that a remedial writ of injunction do issue herein *pendente lite*, enjoining and restraining said defendants, and each and all of them, and their counsellors, officers, and agents, and the pilots' association, from interfering with the business of using the steamboat Mary Lee as a pilot boat, and from interfering with officer Captain Geo. A. Sheldon of said pilot boat, and from interfering with Hiram Follett, Pliny Cox, and Geo. A. Falconi, branch pilots of the port of New Orleans, part owners of said pilot boat Mary Lee, from exercising and performing the duties of their said office as branch pilots of said port of New Orleans and while in the service of your orator, and pending these proceedings, and with a view of preserving from waste and destruction of his business and property. That after due proceedings had that said injunction be made perpetual, and that said defendants be perpetually enjoined, restrained, and inhibited from annoying, harass-

9 ing your orator, or otherwise interfering with his occupation and business of piloting, or with using the steamer Mary Lee as a pilot boat at the mouth of Mississippi river, South Pass, and known as the jetties; and from interfering with the branch pilots running in connection with said Mary Lee, and especially with Hiram Follett, Pliny Cox, and Geo. A. Falconi, branch pilots of the port of New Orleans.

That their association, or confederation, formed on the 29th May, 1879, so far as it was designed and intended to interfere with the rights of your orator, the steamer and pilot boat Mary Lee, and with the officers of said pilot boat and with the branch pilots, part owners of said boat, to wit: Hiram Follett, Pliny Cox, and Geo. A. Falconi, be decreed to be a combination and confederation *contra bonos mores* and in violation of law and good order, and that all the acts done in pursuance thereof are null and void; that the rights of your orator to pursue his occupation with the Mary Lee as a pilot boat, to pilot vessels propelled either by steam or sail in and through the channel at South Pass and known as the Jetties, to or from sea, be recognized in pursuance of the acts of Congress, now or hereafter to be passed and enforced; and that said channel be decreed to be under and subject to the control of the acts of Congress of the United States; and pending its construction, under the rules and regulations of the Secretary of War of the United States, and under and by
10 virtue of the acts of Congress relative to the rights of citizens of different States, that the circuit court of the United States be decreed to have jurisdiction of the rights of your orator in the premises.

And your orator further prays that your honors grant unto your orator a writ of subpœna to be directed to Richard Francis, W. T. Levine, C. W. Read, Wm. F. Higgins, John McLaughlin, Joseph Smith, John Ervine, R. M. Wilson, A. A. Douglass, Charles Dennis, Philip Wuertz, Thomas D. Lewis, D. B. Morgan, Jos. Prebel, Robt. H. Tilford, Sr., Gustave Gersdorf, Francis Bailey, Oscar Schultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, Wm. E. Pendleton, Henry Buttcher, Benjamin S. Ames, Peter Douhan, Bernard Michell, Frances Lory, Chas. S. Clark, E. C. Bannon, Francis Williams, N. L. Cloutman, per Jos. Preble, Thos. Wilson, Robt. T. Wilson, Jas. W. Lyons, Jas. Redman, Wm. B. Turley, George Osgood, all citizens of the State of Louisiana.

And your orator prays for an order commanding them, and each of them, at a certain and under certain pain therein specified, personally to be and appear before your honors in this Honorable Court, and then and there to answer all and singular the premises, and to stand to, abide, and perform all and such order decree thereon as to your honors shall seem meet in the premises;

and your orator prays for all general and equitable relief
11 as the nature of the case may require; and your orator will ever pray, etc.

(Signed) BRICE & PARDEE,
Solicitors.

John W. Black, resident agent for James M. Flinn, being duly sworn, deposes and says that he has read the bill of complaint of James M. Flinn, and knows the contents thereof, and that the same is true of his own knowledge; that said James M. Flinn is a citizen of the State of Florida, where he now is, as he is informed and believes.

(Signed) JNO. W. BLACK.

Subscribed and sworn to before me Jan'y 28th, 1881.

(Signed) T. V. COUPLAND,
Comm'r U. S. Circuit Court.

DISTRICT OF LOUISIANA:

Let the defendants show cause on the 3d day of February, A. D. 1881, at 11 a. m., why the injunction should not be granted *pendente lite*, as prayed for in the within bill of complaint, and meanwhile, and until the hearing of this application, let the defendants be restrained as prayed for in said bill of complaint, except that this order is not to be construed to interfere with the prosecution of any suits already commenced in the courts of the State of Louisiana.

January 28, 1881.

(Signed) EDWARD C. BILLINGS, *Judge.*

12 *Restraining Order. Issued January 28th*, 1881.

UNITED STATES OF AMERICA.

Circuit Court of the United States, Fifth Judicial Circuit and District of Louisiana.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et al.* } No. 9282.

The President of the United States to Richard Francis, individually and as agent, Greeting:

Whereas, it has been represented unto us, in our said circuit court, on the part of James M. Flinn, in a bill in equity lately exhibited against you and others touching certain matters and things therein set forth; and whereas the Honorable Edward C. Billings, one of the judges of our said court, upon due consideration thereof, has made and allowed an order in said cause, whereby you and others are required to show cause on the 3d

day of February, 1881, at 11 a. m., why an injunction should not issue as prayed for in said bill of complaint; and whereas, the said judge has granted and allowed an order restraining you and others immediately and forthwith, and during the
13 pendency of said motion for an injunction, to the full extent and effect as prayed for in said bill of complaint;

Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said Richard Francis, individually and as agent, your agents, attorneys and servants, and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, that you, and each of you, absolutely refrain and desist from interfering with the business of using the steamboat Mary Lee as pilot boat, and from interfering with officer Captain Geo. A. Sheldon, of said pilot boat, and from interfering with Hiram Follett, Pliny Cox, and Geo. A. Falconi, branch pilots of the port of New Orleans, part owners of said pilot boat Mary Lee, from exercising and performing the duties of their said office as branch pilots of said port of New Orleans while in the service of the complainant.

This order is not to be construed to interfere with the prosecution of any suit already commenced in the courts of the State of Louisiana.

And that you, the said Richard Francis, individually and as agent, your agents, attorneys and servants, and each of you, remain so inhibited and restrained until the further order of our said court in the premises.

Witness the Honorable Morrison R. Waite, Chief Jus-
14 tice of the Supreme Court of the United States, this 28th day of January, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] (Signed) T. V. COUPLAND,
D'y Clerk.

Marshal's Return.

Received January 28th, 1881, by the U. S. Marshal, and on January 28th, 1881, I served a true copy of the within restraining order on Richard Francis, individually and as agent, by handing the same to him in person in the city of New Orleans.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

15 UNITED STATES OF AMERICA.

The President of the United States to the Marshal for the Eastern District of Louisiana, Greeting:

You are hereby commanded to summon Richard Francis, a citizen of the State of Louisiana, to appear before the honorable

the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of March, 1881, then and there to answer a bill in chancery, filed against him and others, wherein James M. Flinn, a citizen of the State of Florida, is complainant, and said Richard Francis and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 28th day of January, in the year of our Lord one thousand eight hundred and eighty-one, and the 105th year of American independence.

[SEAL] (Signed) T. V. COUPLAND, *D'y Clerk.*

The defendant is hereby notified that he is required to enter appearance in the clerk's office of the United States circuit court on or before the first Monday of March, 1881, otherwise the bill may be taken *pro confesso.*

(Signed) T. V. COUPLAND, *Clerk.*

16 United States Circuit Court.

JAMES M. FLINN,
vs.
RICHARD FRANCIS *et al.* } No. 9282.

Subpœna in Chancery.

Marshal's Return.

Received Jan. 28th, 1881, by the U. S. Marshal, and on Jan. 29, 1881, I served a true copy of the within subpœna in chancery on the within-named Richard Francis, by handing the same to him in person in the city of New Orleans.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

17 *Motion to Dismiss Bill. Filed Feb'y 1st*, 1881.

Circuit Court of the United States, District of Louisiana.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et al.* } In equity. No. 9282.

And now come the said defendants, by J. R. Beckwith, their solicitor, and move the court that the restraining order herein granted be vacated and set aside, and the rule herein be dismissed for the following reasons among others:

1st. That there is no equity in the bill.

2d. That on the face of the bill this court has no jurisdiction of the controversy.

18 3d. That the bill is defective for want of proper parties, and cannot be made good in that respect and particular, and pray that this cross-motion be heard at the same time appointed for the complainant's motion for injunction *pendente lite.*

(Signed) J. R. BECKWITH,
Sol. for Def'ts.

Demurrer. Filed March 3d, 1881.

Circuit Court of the United States in and for the District of Louisiana. In Equity. No. 9282.

The joint and several demurrer of Richard Francis, William T. Levine, C. W. Reed, Wm. F. Higgins, John McLaughlin, Joseph Smith, John Ervine, R. M. Wilson, A. A. Douglass,

19 Charles Dennis, Philip Wuertz, Thomas D. Lewis, D. B. Morgan, Jos. Preble, Robt. H. Tilford, Gustave Gersdorf, Francis Bailey, Oscar Schultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, Wm. E. Pendleton, Henry Buttcher, Benjamin S. Ames, Peter Douhan, Bernard Michel, Frances Lory, Chas. E. Clark, E. C. Bannon, Francis Williams, N. S. Cloutman, Thomas Wilson, Robert T. Wilson, James W. Lyons, Jas. Redman, Wm. B. Turley, and George Osgood, defendants to the bill of complaint of James M. Flinn, complainant.

These defendants, by protestation, not in any wise confessing or acknowledging all or any of the matters in and by said bill of complaint set forth and complained of to be true in manner and form as therein and thereby set forth and alleged, severally say that they are advised that there is no matter or thing in said bill of complaint good and sufficient in law to call these defendants to account in this hon. court for the same, but that there is good cause for demurrer thereunto accordingly, and for cause of demurrer, among other things, say:

1st.

That said bill of complaint doth not state any sufficient ground for any equitable cognizance or relief in favor of the said complainant and against the said defendants or either or any of them.

20 2d.

That by the complainant's own showing, he has no right to use the said steamboat Mary Lee as a pilot boat, as it does not appear that he is either a citizen of the State of Louisiana, or a branch pilot of the port of New Orleans, or in any manner indi-

vidually entitled to any emolument or dues as a branch pilot, and has no just ground of complaint.

3d.

That by plaintiffs own showing, the only persons associated with the said complainant, who, according to the averments of the complainant, have any right to use the said Mary Lee as a pilot boat are Hiram Follett, Pliny Cox, and George A. Falconi, and they are not made parties to this action, and appear to be citizens of Louisiana, the same State with the defendants.

4th.

That it appears, by the complainant's own showing, that J. W. Black, Hiram Follett, Pliny Cox, and George A. Falconi, all citizens of the State of Louisiana, are joint co-owners with the said complainant, and are not made parties to this action, and from their residence and citizenship cannot be made parties to this action, and that the court is without jurisdiction by reason of the residence and citizenship of the parties in interest in the controversy disclosed in said bill of complaint.

21 5th.

That the said complainant has shown and set forth that he is a resident and citizen of the State of Florida, and cannot in law be or act as a pilot or branch pilot of the port of New Orleans; that he is not a branch pilot, and, if his bill be true, is engaged in crime by acting or pretending to act as a branch pilot of the port of New Orleans, and in no manner shows any right or title to any equitable relief on his behalf.

Wherefore, and for divers other errors, defects and causes of demurrer in said complainant's bill of complaint contained and appearing on the face thereof, these defendants to demur in law thereunto, and crave the judgment of this hon. court, whether they are compellable or ought to make any other answer thereunto otherwise than as aforesaid, and these defendants pray to be hence dismissed, with their costs in this behalf most wrongfully sustained.

(Signed) J. R. BECKWITH,
Sol. and Counsel for Defts.

The undersigned, solicitor and counsel for defendants named in the foregoing demurrer, certifies that, in his opinion and belief, the above demurrer is well founded in point of law.

(Signed) J. R. BECKWITH,
Sol. and Counsel for Defts.

22 DISTRICT OF LOUISIANA, *ss:*

Richard Francis, being duly sworn, deposeth and saith that he

is one of the defendants named in the foregoing demurrer, and he saith that the same is not interposed for the purpose of delay, but that justice may be done.

(Signed) RICHARD FRANCIS.

Sworn to and subscribed before me this 31st January, 1881.

[SEAL.] (Signed) THEO. GUYOL, *N. P.*

Entry at Rules.

Extract from chancery order book, Thursday, March 3, 1881.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et al.* } No. 9282.

Richard Francis, William T. Levine, C. W. Reed, William F. Higgins, John McLaughlin, Joseph Smith, John Ervine, R. M. Wilson, A. A. Douglass, Charles Dennis, Philip Wuertz, Thomas D. Lewis, D. B. Morgan, Joseph Preble, Robert H. Tilford, Gustave Gersdorf, Francis Bailey, Oscar Schultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern,
William E. Pendleton, Henry Buttcher, Benjamin S. Ames,
23 Peter Douhan, Bernard Michell, Francis Lory, Charles E.
Clark, E. C. Bannon, Francis Williams, N. S. Cloutman, Thomas Wilson, Robert Wilson, James W. Lyons, James Redman, William B. Turley, and George Osgood, defendants herein, by J. R. Beckwith, their solicitor, have this day filed their joint and several demurrer to the complainant's bill of complaint.

Affidavit of Richard Francis. Filed March 23, 1881.

Circuit Court of the United States, Eastern District of Louisiana.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et al.* } In Equity. No. 9282.

Richard Francis, being first duly sworn, deposeth and saith that he is one of the defendants named in the bill herein; that he is the agent of the association known as the Branch Pilots of the Port of New Orleans, Louisiana, as will fully and at large appear from a copy of the articles of association between the said pilots, a copy of which is hereto annexed and made part of this affidavit; that said association is an association of duly licensed branch pilots of the port of New Orleans, who are duly licensed and commissioned by the competent authorities of the State of Louisiana, after due recommendation and bond, as required by
the laws of said State, and is made under and by virtue of
24 the authority granted in section 2707 of the Revised Statutes
of the State, and is in all things lawful and in accordance

with law and formed for and with the laudable purpose of furnishing equal protection, benefit, and profit to all of the pilots in said association, and placing the weak on the same basis as the strong, and that all of the pilots may obtain equal benefit and protection in the life of hardship involved in the discharge of the duties of a pilot under all circumstances and in all weathers. That the persons named in said exhibit A are the persons associated together as aforesaid for the purposes aforesaid, and said exhibit A is referred to for the terms of said contract of association. That said association has been in effect and force and observed since the first day of June, A. D. 1879, and no person who executed the said contract has broken the terms thereof, except one George A. Falconi, and that he was seduced to join the said Black in a scheme of fraud and wrong by the solicitation and bribery of said Black, who is the real party in interest as complainant in said bill of complaint. That deponent is informed and believes that the pretended interest of said Flinn in this controversy is a sham and a fraud upon the court, and the said Flinn has no interest in the controversy set forth and referred to in said bill of complaint, and that the said Flinn has not, during the past two years, exercised any act of control or direction over said vessel, the Mary Lee, and has, as deponent is informed and believes, repeatedly denied that he had any interest, ownership, or control in said vessel, or pretended to have any such interest or control; and therefore said deponent saith that he verily believes that the said name of said Flinn is used by the said Black, who is the real owner of said vessel, in fraud and wrong.

And further said deponent saith, that it is not true that the said Mary Lee was built or used for a pilot boat, but on the contrary thereof, was constructed as a tug or tow boat, and has been and was so used until the said Black entered upon the fraudulent and lawless scheme hereinafter set forth.

And further deponent saith, that the statutes of this State require all branch pilots of the port of New Orleans to be the bona fide owner of a decked pilot boat of fifty tons burden, and that all boats used and engaged as pilot boats shall be used exclusively as such pilot boats, and for no other purposes. That the said Black and his co-conspirators in wrong do not and have not used said vessel exclusively as a pilot boat, but have and do use the said Mary Lee as a tow boat, and tow vessels for hire, in defiance of the law of the State.

And deponent further saith that the said Black and the said Sheldon, named in said bill as the master and part owner of said Mary Lee, are neither of them branch pilots of the port of New Orleans, and never have been such pilots.

And that the statement in said bill of complaint that the said

Hiram Follet is, or at the time stated in said bill of complaint was a duly licensed pilot of the port of New Orleans is, as your deponent believes, an effort to impose upon the court, by the
26 concealment of what the said Black, who swore to the bill of complaint, well knew to be a studied concealment of the real facts, as he knew them at the time when he swore to said bill, and at the time when he entered into the combination with Follett, hereinafter set forth.

That the fact and truth concerning said Follett's pretense as a branch pilot are as hereinafter set forth: That some time about the 13th day of January, 1874, and during the political troubles of that period, and when there was great commotion in the city of New Orleans, growing out of resistance to the authority of Wm. P. Kellogg, who was at that time Governor of the State, the said Follett, who was in no part the owner in any pilot-boat, and who has neither applied for nor been examined as to his fitness to be pilot, imposed upon the Governor of the State; and without any certificate or other paper from the pilot commissioners, as required by law, before the Governor could, under the law of the State, act in the matter of the appointment of a branch pilot, procured the Governor to, in error and beyond his authority, appoint, or attempt to appoint, him a branch pilot of the port of New Orleans, and fraudulently obtained what purported to be a commission as branch pilot of the port of New Orleans, in violation of the laws of the State regulating such matters. That deponent has caused diligent search to be made where the evidence that the said Follett ever gave the bond required by law of all branch pilots, before they can act as pilots should
27 exist, if the bond had ever been given, and that he has been unable to find that the said Follett ever gave or made the bond required by law, or that he, in that particular, ever qualified, or attempted to qualify, as a pilot, or ever did, under said fraudulent commission, obtain the color of right to pilot, even under the said pretended commission.

That afterwards, and on the 29th day of May, 1875, it coming to the knowledge of the Governor of the State that he had been imposed upon by the said Follett, and that the said Follett had never been examined and had no certificate from the Board of Pilot Commissioners showing his examination and fitness and right to be appointed to be a pilot, and that fraud had been practised upon him, the said Governor, and upon the official report of the board of examiners the said Wm. P. Kellogg, by a public proclamation, in the exercise of the power vested in him by law, did revoke, recall, and in all things annul said pretended commission, as will fully and at large appear by reference to an attested copy of said revocation and proclamation under the great

seal of the State hereto annexed, marked "Exhibit B," and made a part hereof.

That from and after said revocation of said fraudulent commission the said Follett ceased to act or pretend to act as a branch pilot until he was hunted up by the said Black for the purposes of fraud and the defiance of the injunction of this court,
28 hereinafter set forth. That all of said facts relative to said Follett, and his pretensions as a pilot, were well known to the said Black long before and at the time when he swore to the bill in this cause, and were wrongfully concealed from the court, as this deponent believes, intentionally, and for the purpose of obtaining a restraining order by concealment of the real truth and fact.

That as to the said Pliny Cox, who is in said bill also alleged to be a duly licensed branch pilot, deponent sweareth that there has been the same concealment of the real facts, as same were well known by the said Black and his counselors and solicitors. That the truth is, that through the instrumentality of like frauds practised upon the Governor of the State, as in the case of Follett, as above set forth, the said Cox, who had never been examined as to his fitness by the Board of Examiners, and had and presented to the Governor no certificate of examination and fitness to be appointed a branch pilot, imitated Follett in his frauds, and by like imposition and frauds practised upon the Governor, obtained fraudulently the issue of a commission as a branch pilot of the port of New Orleans on or about the 13th day of February, 1874. That a diligent search of the public records does not show any evidence that the said Cox ever qualified under said fraudulent commission, by giving the bond required by law of all pilots before attempting to pilot vessels as branch pilots, and this deponent verily believes that no such bond was ever given
29 by said Cox, and that there is no such bond in existence in the records of the State. That, as in the case of Follett, the Governor ascertained, on or about the 29th of May, 1875, of the fraud which had been practised on him by Cox, and that said commission was unlawful; that there had been no examination of Cox, and that he had no certificate of fitness or competency to be a branch pilot, and the said Governor, in the exercise of his lawful authority in that particular, did, on the 29th day of May, by a public proclamation, revoke and recall said pretended commission of the said Cox, as will fully and at large appear by a copy thereof, attested under the great seal of the State, hereto annexed, marked Exhibit "C," and made a part hereof.

That the said Cox, upon said revocation, acquiesced therein, and did not, as deponent ever heard or believes, ever pretend to be a pilot until he was hunted up and used by the said Black for the like fraudulent purpose and end as was the case with Follett,

as hereinafter set forth; and that at the time when the bill of complaint herein was presented to the court, and the restraining order herein granted was prayed for, the said Black and his said counsel were in all things aware of the facts as to the pretension of Cox to be a pilot rested, and of said revocation of said fraudulent commission, and could have presented the same to the court; and that the facts appeared in the record of the case of Geo. Osgood *vs.* J. W. Black *et al.*, referred to in said bill of
30 complaint; and said deponent saith that he knows the contents of the petition in said last-named case, and that the same is true as therein set forth, and makes the same a part of this affidavit, and refers to said record for the proceedings had in said case, as the same are there shown and set forth in the pleadings on the part of the plaintiff and intervenors therein.

That it is true proceedings were had in this court in the case of R. W. Francis *vs.* J. W. Black, and deponent believes that the number of the docket as stated in said bill to be as therein stated. That the reasons for bringing said suit and filing said bill are as follows: That said Black, at and about the date of the exhibiting of said bill of complaint in that cause, first contrived the plan of injury, fraud, wrong, and defiance of law, which he has since elaborated and attempted to carry into effect, to ruin and destroy the avocations and profits of the duly licensed branch pilots of the port of New Orleans, and at that time attempted to effect that purpose by inducing the masters of vessels who, by law, were required to take pilots or pay half pilotage, to refuse pilots who offered, and that he, with his tow-boats, would tow them and their vessels through the passes at the mouth of the river, and defeat the claim of the pilots and defy the law. That the complainants in that bill were advised by their counsel that the same was in violation of the act of Congress referred to in said bill of complaint, in so far as it referred or related to
31 vessels drawing twelve feet of water or more, and that this court had jurisdiction over the inquiry and could protect the complainant therein against the lawless acts of the said Black in that particular. That after due proceedings had in that cause, this court decreed and granted an injunction against the defendant, enjoining him from attempting to take vessels through the jetties drawing twelve feet or more, unless the said vessels were in charge of a duly licensed branch pilot licensed by the authorities of this State, and in so far as this court could at that time do so, put an end to the unlawful acts of Black in the use of the Mary Lee and other boats under his control in the unlawful manner complained of in said bill of complaint in that suit.

That as soon as the said Black ascertained that his unlawful scheme was interrupted by the process of law in that case, he cast about him to defeat the ends of justice and law, and still carry

out his fraudulent scheme, notwithstanding the said injunction; and, as the first step in said new scheme, he pretended that his boat, the Mary Lee, was a pilot boat, and had her painted to represent a pilot boat, with a large number 2 painted on her smoke stack, and put out and paraded on his vessel the flags and signals which designate a pilot boat, and would deceive approaching vessels into the belief that the vessel was a legitimate pilot boat, and well knowing the fraudulent character of the said Follett's pre-
32 tensions and of the revocation of his pretended commission took him on board the said vessel, under some secret understanding as to the terms of his employment, which deponent does not know in detail, had the said Follett exhibit his worthless, revoked commission to the masters of vessels, and pretend that it was a genuine, honest commission in full force, and that he was a duly licensed branch pilot; and in order that he might impress masters of vessels with a belief that fraud was not practised upon them, the said Black caused the said Follett and some of the officers on said Mary Lee to be decked out with gold lace stripes and an ostentatious uniform or dress, as a part of his tricks and scheme of fraud, and that scheme of show was, as deponent believes, of material aid in the furtherance of said scheme of fraud, and lent effective aid to the purpose for which it was invented. That deponent is informed and believes that the said Black had a double purpose in his said fraudulent scheme: first, to attempt to injure the regular pilots and deprive them of their just emoluments; and second, to enable him, under the pretense that Follett was a duly licensed pilot, to defy and circumvent this court and disobey the injunction directed against him from this court in said above-described suit.

That as soon as said defendant, George Osgood, learned of of scheme of the said Black and of the fraudulent pretensions of the said Follett to be a branch pilot, and that he was pretending to be a pilot, he, being a branch pilot, instituted the suit referred to in said bill of complaint as the suit of
33 George Osgood vs. J. W. Black and others, in the Civil District Court for the Parish of Orleans, to arrest the course of wrong which the defendants in that cause intended to accomplish; and the defendants named in the bill herein, who are members of the said association set forth in "Schedule A," intervened therein, and an injunction was allowed in said cause, and this deponent refers to a copy of the record in said cause, now in this court on file in certain proceedings for a writ of certiorari, and referred to in said bill of complaint, and to which this affiant refers.

That as soon as the said writ of injunction was served on the said Follett and the said Black, or at about that time, in order to still continue his lawless acts, and as said deponent is informed

and believes, to enable him to defeat and defy said last named injunction, the said Black hunted up or took into his scheme the said Cox, and proceeded to use him as an aid in his scheme of fraud in the same manner as he had used Follett.

That in order to dispose of the criminal pretensions of the said Follett and the said Cox, the Attorney General of the State instituted proceedings against each of the said intruders, Cox and Follett, under act of the Legislature of the State to provide for removal of intruders into office, and to this action the defendants appeared and pretended that the suit should have been brought in the parish of Plaquemines instead of at the parish of
34 the domicil of the defendants, and in one of the cases obtained a judgment that said suit was improperly brought at the domicil. That an appeal from the determination of the preliminary question of jurisdiction was taken to the Supreme Court, and has been tried in said Court.

That after the said suits under the said act relating to intrusion into office had been instituted, the said Black cast about for some further instrument to aid him in his scheme, and took into his plan and on his boat one Charles Richards, who had at one time procured a fraudulent commission as branch pilot by a resort to substantially the same frauds as had for that purpose been resorted to by the said Follet and the said Cox, and whose commissions had, for like reasons and in like manner, been revoked by the Governor on or about the 22d day of March, 1870, and pretended that the said Richards was a duly licensed branch pilot; that long before the date of the taking of the said Richards into the scheme of the said Black, as aforesaid, judicial proceedings in due form had been instituted against the said Richards in the district court of the State, holding sessions in the parish of Plaquemines, at that time presided over and held by Don A. Pardee, at that time a judge of said court, and at this time the counsel and solicitor of the said Black, and the said nominal complainant in this action; that the object of said ju-
dicial proceeding was to prevent the said Richards from
35 continuing to act as said pilot after said revocation of his fraudulently obtained commission, and for that purpose his right to be a pilot, and his pretense of right under said fraudulent commission, was put in issue and tried in said court, the said Don A. Pardee holding said court as the judge thereof; and after full hearing and trial, the said Don A. Pardee rendered judgment in said cause, in which he adjudged that said Richards was not a licensed pilot, and perpetually enjoined him by the judgment in said cause from acting and pretending to be a branch pilot of the port of New Orleans, which said judgment is still in full force and effect, and was by the said Richards in all things obeyed until he was seduced into a disobedience of said

judgment by the said Black as aforesaid, to serve his dishonest ends and purposes. That in order to prevent the said Richards from aiding the said Black in his frauds the said Richards was attached and punished for his disobedience of said injunction and final judgment; but deponent is informed that the said Black still keeps the said Richards in his employment and on his boat for purposes of wrong and fraud.

That when the said Black had failed to obtain satisfactory aid in the assistance of Follett, Cox, and the said Richards, he set about the accomplishment of a design which deponent has been informed and believes the said Black has frequently threatened to accomplish—that is to say, the breaking up of the said association of pilots by fraud.

That for that purpose and to that end he had clan-
36 destine dealings and negotiations with Geo. A. Falconi, named in said bill of complaint, with intent to reduce the said Falconi into his scheme and procure him to engage in a fraudulent scheme for the breach of the terms of said contract of association, subscribed and entered into by the said Falconi with the other pilots, as set forth in "Exhibit A."

That the said Falconi had, in common with all the other pilots in said association, agreed to contribute to the same all his time, skill, and influence as a pilot, and not enter into any engagement or business of piloting outside of, or in opposition to, his said associates, as will fully and at large appear by article seven of said articles of association. That deponent is informed and believes that the said Black or his emissaries assaulted the integrity of the said Falconi with delusive promises and bribes of money to procure him to become dishonest and break the obligations of said contract binding on him, and to that end, as deponent is informed and believes, gave him a sum of money amounting to nearly five hundred dollars to induce him to fall into the plans of said Black, and, for a while, succeeded in inducing the said Falconi to enter into his scheme, and compelled his associates, defendants herein, to again resort to the courts to compel the said Falconi to comply with the terms of his said agreement and desist from the fraudulent breach thereof, and to that end prayed for and obtained from the said District Court for the parish of Orleans an injunction against the said Fal-
37 coni, since which, as your affiant is informed and believes, the said Falconi has abandoned the said Black and his associates and has returned to the fulfilment of his said contract obligations, as he in honesty should do, and has promised to have nothing further to do with the said Black and his tricks and schemes.

And deponent further saith that although it appears in the said bill of complaint herein, and is sworn to by said Black, that the

said Follett, Cox, and Falconi are part owners in the said Mary Lee, this deponent has reasons to believe that the pretence that the said parties are part owners in said Mary Lee is a badge of fraud and dissimulation, and is a sham, and in fact a false pretence, and resorted to because, under the provisions of section 2702 of the Revised Statutes of the State, it is required that each branch pilot of New Orleans shall be the owner or part owner of at least one decked pilot boat of not less than fifty tons burden, and that he shall keep said boat exclusively engaged and employed as a pilot boat, and that every branch pilot not owning and employing a pilot boat as aforesaid shall be suspended from his office by the masters and wardens of the port of New Orleans and report the case to the Governor, who may withdraw the commission or license of such branch pilot. That deponent is informed and believes that the said Follett, Cox, and Falconi are each persons without means sufficient to buy a share in said vessel, and that the pretence that they are owners in said vessel
38 is a sham and fraud, resorted to to aid them in their fraudulent schemes, and that any and all pretended transfers of title to them, or either of them, if put in form on paper, is a sham and fraud, conceived and carried out in the same spirit as the other said schemes of the said Black. That the said Black has at all times asserted that he was, and is, the controling owner of the said Mary Lee, and governs and controls her movements and actions. That this deponent is informed and believes that the said Mary Lee is not used and employed exclusively as a pilot boat, but on the contrary thereof, is used also as a tow boat for hire, and that towing constitutes a large portion of the business of said vessel.

And deponent further saith that the wrongful acts of the said Black, in pretending to be authorized to pilot vessels, as hereinbefore set forth, have caused the defendant pilots great loss and damage, amounting to several thousand dollars; and that he is informed that the said Black and his said emissaries boast that they are taking away the dues and emoluments of the duly licensed pilots, and use the money to fight them in the courts, and to that end resort to all manner of device to induce shipmasters to withdraw the piloting of their vessels from the lawful pilots and allow Black and his associates to take their vessels to and from the sea, for hire, in their pretended character of pilots.

39 *Exhibit A,*

Filed with affidavit of R. Francis.

Act No. 90.

Partnership of the Branch Pilots of the Port of New Orleans, May 27, 1879.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Be it known that on this, the twenty-seventh (27th) day of May, in the year of our Lord one thousand eight hundred and seventy-nine, and of the independence of the United States of America the one hundred and third, before me, Joseph A. Quintero, a notary public, duly commissioned and qualified in and for the parish of Orleans, in the State of Louisiana, domiciliated in said parish, and in the presence of the witnesses hereinafter named and undersigned, personally appeared Richard Francis, Esq., of lawful age, and a resident of the parish of Plaquemines, in the State of Louisiana, but at the time of the execution of these presents temporarily present in this city of New Orleans, herein acting as the agent and attorney in fact of and for William T. Levine, Charles W. Read, William F. Higgins, John McLaughlin, George A. Falconi, Joseph Smith, John Ervine, Robert M. Wilson, Asa A. Douglass, Charles Dennis, Philip Wuertz,
40 Thomas D. Lewis, Daniel B. Morgan, Joseph Preble, Robert H. Tilford, Gustave Gersdorf, Francis Bailey, Oscar Schultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, William E. Pendleton, *Huttcher*, Benjamin S. Ames, Peter Douhan, Bernard Michell, Francis Lory, Charles S. Clark, Edward C. Bannon, Francis Williams, Nathaniel L. Cloutman, Thomas Wilson, James W. Lyons, William B. Turley, and James Redman, all of whom are of lawful age and residents of the said parish of Plaquemines, in the State aforesaid, as such constituted under a power of attorney executed on the 20th day of May, 1879, duly acknowledged before me, notary, on the 24th day of May, 1879, and hereto annexed for reference, which said appearer, acting in his said capacity, declared that by virtue of the power and authority vested in him as agent and attorney in fact aforesaid, he does by these presents enter and form his said constituents into a partnership for the objects and purposes hereinafter expressed and set forth, said partnership to be governed and regulated by the following articles, to wit:

Article First.

That said partnership shall be known and designated as "the Branch Pilots of the Port of New Orleans, Louisiana," and its domicil is hereby fixed and established at the said city of New Orleans, in the State of Louisiana.

41 *Article Second.*

The objects and purposes of the said partnership shall be to mutually protect the common interest of the said partners thereto in the pursuance of their profession as branch pilots of the port of New Orleans, in the State of Louisiana.

Article Third.

The business of the said partnership shall be a general piloting business, to be exercised principally in the piloting of vessels, steamships, ships, schooners, and brigs of all descriptions over the bar and through the various passes at the mouth of the Mississippi river, and whether said vessels be returning from or going to sea, and generally any and every other thing to said business properly belonging and appertaining.

Article Fourth.

The said partnership shall begin and commence on and after the first day of June, in the year eighteen hundred and seventy-nine, and shall continue and exist for the space and term of twenty years from that date, unless sooner dissolved in the manner hereinafter provided for.

Article Fifth.

The capital stock of the said partnership is hereby fixed at the sum of sixty-three thousand dollars, ($63,000,) consisting
42 of certain vessels which have been purchased for the purposes of this partnership by the respective members thereof, and herein contributed by them respectively to form the capital stock of this partnership, and which said vessels, contributed as aforesaid, have, for the purposes of this act, been mutually valued and appraised as follows, to wit:

1st.	Jennie Wilson,	valued at	$22,000
2d.	Haze,	"	10,000
3d.	Nellie,	"	7,000
4th.	Ella,	"	5,000
5th.	Charles Morgan,	"	7,000
9th.	Oriental,	"	6,000
7th.	Sam Houston,	"	2,400
8th.	Sylph,	"	1,000
9th.	General Jackson,	"	1,800
10th.	Lone Star,	"	800
	Total		$63,000

Which said capital stock is divided into as many contributions as there are members of this partnership, viz., thirty-eight, so as to make the contribution of stock of each partner equal and

uniform, and in dollars and cents amount to the sum of one thousand six hundred and fifty-seven dollars and eighty-nine and one-half cents, ($1,657.89½,) and which said capital stock, divided as above set forth, has been contributed by the said partners in the manner following, to wit: the said Robert M. Wilson, Thomas Wilson, John McLaughlin, John F.
43 Gersdorf, Thomas Craig, Francis Lory, and Joseph Redman have contributed their proportion and share of said capital stock, viz., the said sum of one thousand six hundred and fifty-seven dollars and eighty-nine and one-half cents (1,657.89½) each in cash, current money of the United States, the receipt whereof by said agent is hereby acknowledged, and full acquittance therefor granted; said Francis Bailey, in part payment of his share of said capital stock, has contributed cash, in current money of the United States, at and before the execution of these presents, the full sum of one thousand and forty-three $\frac{57}{100}$ dollars, ($1,043.57,) and for the balance has issued his note for the sum of six hundred and fourteen 32½-100 dollars, ($614.32½;) said William T. Levine, Joseph Preble, Nathaniel L. Cloutman, Francis Williams, William F. Higgins, and Robert H. Tilford, in part payment of their share of said capital stock, have contributed in cash, current money of the United States, at and before the execution of these presents, the full sum of eight hundred and thirty-three 33⅓ dollars, ($833.33⅓,) and for the balance have issued their separate notes each for the sum of eight hundred and twenty-four 56⅔ dollars, ($824.56⅔;) said James W. Lyons, Asa A. Douglass, Thomas D. Lewis, Walter Jarvis, and Thomas Craig, in part payment of their share of said capital stock, have contributed each in cash, current money of the United States, at and before the execution of these presents, the full sum of one thousand one hundred and sixty-six dollars and sixty-six and two-third cents, ($1,166.66⅔,)
44 and for the balance of said stock have issued their separate notes each for the sum of four hundred and ninety-one dollars and twenty-two and one-third cents ($491.22⅓;) said Harry Buttcher, Peter Douhan, Joseph Smith, Philip Wuertz, and Oscar Schultz, in part payment of their share of said capital stock, have contributed each, cash, in current money of the United States, at and before the execution of these presents, the full sum of twelve hundred dollars ($1,200.00,) and for the balance have made and issued their separate notes each for the sum of four hundred and fifty-seven dollars and eighty-nine and one-half cents ($457.89½;) said Charles Dennis, Daniel B. Morgan, and Gustave Gersdorf, in part payment of their share of said capital stock, have contributed each, cash, in current money of the United States, at and before the execution of these presents, the full sum of eight hundred dollars, ($800.00,) and for the bal-

ance have issued their separate notes, each, for the sum of eight hundred and fifty-seven dollars and eighty-nine and one-half cents ($857.89½;) said Benjamin S. Ames, in part payment of his share of said capital stock, has contributed in cash, current money of the United States, at and before the execution of these presents, the full sum of one thousand dollars, ($1,000,) and for the balance has issued his note for the sum of six hundred and fifty-seven dollars and eighty-nine and one-half cents, ($657.89½;) said Robert T. Wilson, in part payment of his share of said capital stock, has contributed in cash, current money of the
45 United States, at and before the execution of these presents, the full sum of eight hundred dollars, ($800.00,) and for the balance has issued his note for the sum of eight hundred and fifty-seven dollars and eighty-nine and one-half cents, ($857.89½;) and said Charles W. Reade, George A. Falconi, John Ervine, Edward Breen, John Ahern, William E. Pendleton, Bernard Michell, Charles S. Clark, and Edward C. Bannon, and William B. Turley, in payment of their respective shares of said capital stock, have issued their respective notes, each, for the sum of one thousand six hundred and fifty-seven dollars and eighty-nine and one-half cents, ($1,657.89½.) All of which said notes, as herein respectively issued, have been drawn by said Richard Francis as agent of said parties respectively, and are all dated at this city of New Orleans of even date herewith, payable each in one year after date, bearing eight per cent. interest per annum from maturity until paid, and have been officially paraphed by me, notary, for identification herewith, and then delivered to said Richard Francis, who, as hereinafter provided for, is constituted the general agent and manager of said partnership, and who hereby acknowledges the receipt thereof, as well as of said cash money herein contributed above set forth, and grants full accquittance and discharge therefor. And the contribution of each partner is to remain intact during the continuance of this partnership.

Article Sixth.

The respective interest and liability of each partner,
46 as between themselves in and to the profits and losses of this partnership, shall be equal and uniform, and shall be borne and partaken of by each partner, share and share alike.

Article Seventh.

In addition to the capital contributed, each partner shall bring to the business of their said firm all of his time, skill, influence, attention, and labor, and no partner shall have the right to enter into or carry on any business of a like nature with the business of this partnership, whether for his own account or in conjunc-

tion with others, said partners being bound to the provisions of this article in the penal sum of five thousand dollars each, and forfeiture of all right, title, and interest in this partnership.

Article Eighth.

Proper and customary books of accounts of the business of this partnership shall be kept, showing exact and just entries of all business transactions, all stock in trade, all profits and losses, and all debits and credits of each partner; to which books of accounts each partner shall at all times, either individually or by any duly authorized representative, have free and easy access. Twice a year, or oftener if agreed upon, an account of stock shall be taken; books shall be properly balanced, profits and
47 losses declared, and the same carried to the debit or credit of each partner, as the case may be.

Article Ninth.

One-half of all the net profits of this partnership due to any member thereof who shall not have paid his contribution of stock in cash and who shall have given notes in payment or part payment thereof, shall be reserved by this partnership and credit given such partners on the back of said notes accordingly—reserving, however, to each partner the right to take up and pay such notes before the maturity thereof; and in case one-half of said net profits, reserved as aforesaid, shall prove insufficient to extinguish and cancel the indebtedness evinced by said notes, then this partnership binds itself to renew the same until such time as said profits shall so cancel and extinguish the same. All other net profits of this partnership shall be divided monthly among the members thereof.

Article Tenth.

Said Richard Francis is hereby made the general agent and manager of said partnership, and empowered to transact and manage the office business of the same, receive and accept service of all citations and other legal proceedings, to sue and be sued, and stand in judgment for or against this partnership, and employ, discharge, and pay counsel. For the faithful performance of his duties he shall receive an annual salary of five
48 thousand dollars, ($5,000.00,) payable monthly, to be secured by mortgage to be forthwith executed by this partnership, and shall execute a bond, with good and solvent security, at the same time that said mortgage shall be granted to him, said bond to be for the sum of ten thousand dollars, ($10,000.00,) and to be conditioned on the faithful performance of the duties of his office.

Article Eleventh.

The said partnership shall have the right to establish such rules, regulations, and by-laws for the observance and performance of these articles of partnership as they may deem fit and proper, provided the same do not conflict with the provisions of this act and are not contrary to law.

Article Twelfth.

In case of the death of any member of this partnership, his heirs or legal representatives shall be settled with in full, and the partnership continued and conducted for account of the surviving partners; and in making said settlement consideration shall be given to the value of said capital stock at the time of such decease, and to the individual account of such deceased member with said partnership.

Thus done and passed, at my office in this city of New Orleans, in the presence of Frederick Zengel and William R. Rich-
49 ardson, witnesses of lawful age and domiciliated in this city, who sign these presents with said appearer and me, notary, on the day and date aforesaid.

(Original signed) Richard Francis, Agent.
" F. Bailey.
" Charles Dennis.
" Thomas Wilson.
" Chas. S. Clark.
" W. B. Finley.
" Robert T. Wilson.
" Francis Lory.
" Wm. E. Pendleton.
" A. A. Douglas.
" Robt. M. Wilson.
" Fred. Zengel.
" W. R. Richardson.
" Joseph A. Quintero,
Not. Pub.

PILOT TOWN, PARISH OF PLAQUEMINES, LA.,
May 20th, 1879.

Be it known to all whom it may concern that we, the undersigned, members of the firm known as the Branch Pilots for the port of New Orleans, State of Louisiana, have made, appointed, and constituted, and that we do by these presents make, constitute, and appoint Capt. Richard Francis, of the parish of
50 Plaquemines, our special agent and attorney in fact, for us and in our names and behalf to make, sign, and execute our promissory notes for such sum or sums of money as may be found

due to or by us, individually, separately, or collectively, in our firm right, on account of our individual or private and separate shares as partners in said firm or partnership, for such sum or sums as may be found by him, as our agent or special attorney, due us by said firm, or due by us to said firm on account of vessels sold by us to said firm, or on account of our individual or personal shares respectively in the joint stock of said partnership; provided, that in no case shall our individual or separate liability be contracted for more than sixteen hundred and fifty-seven and eighty-nine 9-18 dollars; and provided further, that said notes shall not draw a greater percentage of interest from maturity than eight per cent. per annum. The said Richard Francis is further specially authorized by these presents to sign the articles of partnership of the undersigned, for us and in our names, as soon as drawn up by Joseph Quintero, not. public in and for the parish of Orleans, State of Louisiana, holding ourselves individually and collectively bound by all his acts in the premises to all intents and purposes as fully and perfectly as we could bind ourselves were we personally present acting in the premises for ourselves.

51 (Originally signed) William T. Levine.
" C. W. Read.
" Wm. F. Higgins.
" John McLaughlin.
" Geo. A. Falconi.
" Joseph Smith.
" R. M. Wilson.
" A. A. Douglass.
" Charles Dennis.
" Philip Wuertz.
" Thos. D. Lewis.
" B. Morgan.
" Jos. Preble.
" Robt. H. Tilford.
" Gustave Gersdorf.
" Francis Bailey.
" Oscar Schultz.
" Walter Jarvis.
" Thos. Craig.
" John F. Gersdorf.
" Edward Breen.
" John Ahern.
" Wm. E. Pendleton.
" Henry Buttcher.
" Benjamin S. Ames.
" Peter Douhan.
" Bernard Michell.

	(Originally signed)	Francis Lory.
	"	Chas. V. Clark.
52	"	E. C. Bannon.
	"	Francis Williams.
	"	N. L. Cloutman, per Jos. Preble.
	"	Thos. Wilson.
	"	James W. Lyons, per A. A. Douglas.
	"	Jas. Redman.
	"	William Turley.

STATE OF LOUISIANA, }
Parish of Orleans. }

Frederick Zengel and John W. Westerfield, of lawful age, being duly sworn according to law, depose and say: That all of the above and foregoing signatures to the within power of attorney were signed and affixed by the aforesaid parties signing the same respectively in the presence of said deponents, and that they, said deponents, have, as such witnesses, subscribed to the same. Deponents further say, that said parties to said power of attorney did execute and sign the same of their own free will and accord, for the purposes therein specified.

(Signed) FRED. ZENGEL.
" J. W. WESTERFIELD.

Sworn to and subscribed before me, this 24th of May, 1879.
(Signed) JOSEPH A. QUINTERO,
Not. Pub.

53 STATE OF LOUISIANA, }
City of New Orleans. }

I hereby certify that the foregoing is a true and correct copy of the original act on file in, and belonging to, the records of my office, as also of the special power of attorney annexed to and made part of said act.

In faith whereof, I hereunto affix my name and seal of office, this 31st day of January, 1881.

[SEAL] (Signed) M. VOORHIES,
Custodian Notarial Records.

Ratification of Act of Francis, in Exhibit A.

Known all men by these presents, that whereas we, William T. Levine, Charles W. Read, William F. Higgins, John McLaughlin, George A. Falconi, Joseph Smith, John Ervine, Robert M. Wilson, Asa A. Douglas, Charles Dennis, Philip Wuertz, Thomas D. Lewis, Daniel B. Morgan, Joseph Preble,

Robert H. Tilford, Gustave Gersdorf, Frank Bailey, Oscar Sehultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, William E. Pendleton, Harry Buttcher, Benjamin S. Ames, Peter Douhan, Bernard Michell, Francis Lory, Charles S. Clark, Edward C. Bannon, Francis Williams, Nathaniel L. Cloutman, Thomas Wilson, Robert T. Wilson, James W. Lyons, William B. Turley, and Joseph Redman, all residents of the Parish of Plaquemines, in the State of Louisi-
54 ana, have, by a power of attorney executed by us, respectively, on the 20th day of May, 1879, constituted and appointed Richard Francis, of said parish and State, to represent and act for us in forming and entering us in a partnership known and designated as "The Branch Pilots of the Port of New Orleans, Louisiana," and which partnership has been executed by our said agent by public act before Joseph A. Quintero, a notary public in the city of New Orleans, on the 27th day of May, A. D. 1879.;

And whereas, in executing said act of partnership aforesaid, our said agent did, in his official capacity, sign and execute for us certain notes in payment and part payment of our contribution of the capital stock of said partnership;

And whereas, the capital stock of said partnership consists of certain vessels purchased by us in equal proportion, for the purpose of said partnership;

And whereas, in the purchase of the schooner "Haze," one of said vessels aforesaid, our said agent, representing all of us, with the exception of Thomas Wilson, John McLaughlin, John F. Gersdorf and Thomas Craig, did execute a certain note for the sum of three thousand three hundred and sixty-eight 42-100 dollars, representing the unpaid portion price of said vessel, and did secure the payment by mortgage and vendor's lien on said vessel;

And whereas, in the purchase of the schooner "Nellie,"
55 our said agent, representing and acting for all of us, except, however, Frank Bailey, did assume the payment of certain mortgages recorded against said vessel, amounting to the sum of five thousand nine hundred and fifty-six 43-100 dollars (5,956.43) as part of the purchase price of said vessel;

And whereas, we, said hereinabove named parties, have, at the time of the execution of these presents, full and personal knowledge and cognizance of all the acts and deeds done and performed by our said agent in our behalf, as set forth herein, viz.: 1st. Executing notes for us in payment of our share of the capital stock of said partnership, which notes we have seen and are familiar and acquainted with as to the amounts, time of payment, interest, etc.; 2d. Executing for us, and in our behalf, a note for $3,368.42, representing the unpaid portion of the purchase price

due by us (with the exceptions above set forth) in purchasing said schooner "Haze," and securing the payment of said note by vendor's lien and mortgage on said schooner; 3d. Assuming, for us and in our behalf, the payment of certain mortgage claims recorded against the schooner "Nellie," amounting to the sum of $5,956.43, and which assumption represents part of the purchase price due by us in purchasing said schooner "Nellie;" and lastly, and generally, all other acts and deeds done and performed by our said agent in and the foregoing premises.

Wherefore, the premises considered, we, said hereinbefore named and undersigned parties, do hereby confer upon
56 said Richard Francis, whom we recognize and constitute by these presents our said agent and attorney in fact, for us and in our names and behalf, full power and authority, 1st. To sign and execute, for us and in our names, as agent, the notes signed and executed by him as aforesaid, in payment of our share of the capital stock of said partnership, of which we have personal cognizance as aforesaid, having, at the execution of these presents, seen and examined said notes, and finding them correct; 2d. To execute said note for $3,368.42, representing the unpaid portion of the purchase price due by us (with the exceptions above set forth) of said schooner Haze, and securing the payment of said note by mortgage and vendor's lien on said schooner; 3d. To assume the payment of said mortgage claim of $5,956.43, representing part of the purchase price due by us in purchasing said schooner "Nellie;" and generally to do and perform all other things, acts and deeds requisite and necessary to be done in and about the premises, as fully, amply, and effectually, to all intents and purposes, as we ourselves might or could if personally present and acting, hereby ratifying and confirming all that our said agent, Richard Francis, shall have done, as herein set forth, or may hereafter do by virtue hereof, and especially ratifying and confirming Article Tenth of said partnership, whereby said Richard Francis is made the general agent and manager of said partnership, in all of its clauses and conditions.

57 In witness whereof, we have hereunto set our hands, at the said parish of Plaquemines, on this, the fourth day of June, 1879.

(Original signed) Chas. W. Read.
" Philip Wuertz.
" Walter Jarvis.
" Gustave Gersdorf.
" Charles Dennis.
" Geo. A. Falconi.
" Thos. Craig.
" John Ervine.

	(Original signed)	Jos. Redman.
	"	Edward Breen.
	"	Wm. E. Pendleton.
	"	A. J. Puiz.
	"	A. A. Douglass.
	"	John F. Gersdorf.
	"	Wm. F. Higgins.
	"	F. Bailey.
	"	W. T. Levine.
	"	B. Michell.
	"	N. L. Cloutman.
	"	Jos. Preble.
	"	John Ahern.
	"	D. B. Morgan, per J. R.
	"	Thos. Wilson.
	"	Peter Douhan.
	"	Henry Buttcher.
58	"	B. S. Ames.
	"	Chas. S. Clark.
	"	Robt. M. Wilson.
	"	Oscar Schultz.
	"	Robt. H. Tilford.
	"	John McLaughlin.
	"	Francis Lory.
	"	Joseph Smith.
	"	Thos. Lewis.
	"	Francis Williams.
	"	E. C. Bannon.
Witnesses :	(Signed)	Jas. Butler.
		J. W. Westerfield.

STATE OF LOUISIANA, }
Parish of Orleans. }

John W. Westerfield, of lawful age, being duly sworn according to law, deposes and says that all of the above and foregoing signatures to the within power of attorney were signed and affixed by the aforesaid parties signing the same respectively in the presence of said deponent, and that he, said deponent, has, as such witness, subscribed to the same.

Deponent further says that said parties to said power of attorney acknowledged, respectively, to deponent, that they, said parties to said power of attorney, did execute and sign the same of their own free will and accord, for the purposes therein specified.

(Signed) J. W. WESTERFIELD.

Sworn to and subscribed before me, this 7th day of June, 1879.

(Signed) JOSEPH A. QUINTERO, *Not. Pub.*

59 STATE OF LOUISIANA, }
Parish of Orleans. }

I hereby certify that the foregoing is a true and correct copy of the original on file in and belonging to the records of my office.

In faith whereof, I hereunto affix my hand and seal of office, this 31st day of January, A. D. 1881.

[SEAL.] (Signed) M. VOORHIES,
Custodian Notarial Records.

Exhibit B,

Filed with Affidavit of R. Francis.

STATE of LOUISIANA, EXECUTIVE DEPARTMENT,
NEW ORLEANS, *May 29th*, 1875.

To Mr. HIRAM FOLLETT,
Branch Pilot, New Orleans:

SIR: Upon the official report of the board of examiners that your commission as branch pilot was issued in error, and not in compliance with sections 2686 and 2702, Revised Statutes, your commission as branch pilot of the port of New Orleans has this day been revoked.

Given under my hand and the seal of State, hereto
60 affixed, this twenty-ninth day of May, A. D. 1875, and of the Independence of the United States the ninty-ninth.

[L. S.] W. P. KELLOGG.

By the Governor:
N. DURAND,
Asst. Secretary of State.

STATE OF LOUISIANA. }
Office of the Secretary of State. }

I, the undersigned, Secretary of State of the State of Louisiana, do hereby certify the above to be a true copy of the original duly recorded in book styled "Book of Proclamations and Messages of W. P. Kellogg as Governor of the State of Louisiana," page 554.

Given under my signature and the seal of the State of Louiisana, at the city of New Orleans, this twenty-sixth day of November, in the year of our Lord one thousand eight hundred and eighty, and the one hundred and fifth year of the Independence of the United States of America.

[SEAL.] (Signed) OSCAR ARROYO,
Asst. Secretary of State.

61 *Exhibit C.*

Filed with Affidavit of R. Francis.

STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,
NEW ORLEANS, *May* 29, 1875.

To Mr. PLINY COX,
Branch Pilot, New Orleans.

SIR: Upon the official report, made by the Board of Pilot Examiners, under sections 2698 and 2686, Revised Statutes, your commission as branch pilot of the port of New Orleans has this day been revoked.

Given under my hand, and the seal of the State of Louisiana hereto affixed this 29th day of May, A. D. 1875, and of the Independence of the U. S. the ninety-ninth.

(Signed) W. P. KELLOGG.

By the Governor,
(Signed) N. DURAND,
Asst. Secretary of State.

STATE OF LOUISIANA,
Office of the Secretary of State.

I, the undersigned, Secretary of State of the State of Louisiana, do hereby certify the above to be a true copy of the
62 original of record in this office in Book of Records of Messages, Letters and Communications of Gov. W. P. Kellogg, Governor of Louisiana, page 554.

Witness my signature and the seal of the State of Louisiana at the city of New Orleans this twenty-fifth day of October, A. D. eighteen hundred and eighty.

[SEAL.] (Signed) OSCAR ARROYO,
Asst. Secretary of State.

Judgment marked "1." Filed with Affidavit of Richard Francis.

State of Louisiana, Civil District Court for the Parish of Orleans.

I hereby certify that on the 24th day of February, 1881, judgment was rendered in this court in the following-entitled suit, in the words and figures following, to wit:

STATE OF LOUISIANA
vs.
HIRAM FOLLET. } No. 1366.

This cause came up for trial.
Present: J. R. Beckwith, for pl'ff.
Defendant absent and not represented.

When, after hearing pleadings and evidence, the law and the evidence being in favor of the plaintiff,

63 It is ordered, adjudged, and decreed that the defendant, Hiram Follett, is in no manner entitled to the office, rights, and franchises of a branch pilot of the port of New Orleans; that he is an unlawful usurper and intruder into such office and franchise, and that he be ejected therefrom, and enjoined and forbidden to act as a pilot or branch pilot of the port of New Orleans. It is further ordered that the defendant pay the costs of this action.

Judgment rendered February 24th, 1881, and signed March 2d, 1881.

(Signed) F. A. MONROE, *Judge.*

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court at the city of New Orleans on this 5th day of March, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] (Signed) FRANK WALL,
Deputy Clerk.

Judgment marked "2." Filed with Affidavit of Richard Francis.

State of Louisiana, Civil District Court for the Parish of Orleans.

This is to certify that on the 3d day of March, 1881, judgment was rendered in this court in the following-entitled suit, in the words and figures following, to wit:

64 STATE OF LOUISIANA
vs.
PLINY COX. } No. 1367.

In this case, the court, considering the law and evidence to be in favor of the relator—

It is ordered, adjudged, and decreed that there be judgment in favor of the said relator, James C. Egan, attorney-general, and against the defendant, Pliny Cox, decreeing the said defendant to be in no manner entitled to the office, right, or franchise of a branch pilot of the port of New Orleans; that he is without authority to act as a pilot of the port of New Orleans; and that he is an unlawful usurper and intruder into such office and franchise, and that he be ejected therefrom and be enjoined and forbidden to act as a pilot or branch pilot of the port of New Orleans.

It is further ordered, adjudged, and decreed that the defendant pay the costs of suit.

Judgment rendered March 3d, 1881, and signed March 10th, 1881.

(Signed) HENRY LAZARUS,
Judge.

In witness whereof, I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this 10th day of March, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] (Signed) H. MEISTER,
Deputy Clerk.

65 And the said Richard Francis, being duly sworn, deposeth and saith, that since the time when the injunction in this suit was asked for, and the motion fixed for hearing for the first time, and when the foregoing printed portion of this affidavit was prepared and printed to be used on that motion, other facts have occurred and matters taken place and the situation changed; that the proceedings therein stated to be pending against the said Cox and Follett in the name of the State of Louisiana, with the object to test the legality of the pretences of said Follett and Cox to be pilots, has been determined in a final judgment in each case, declaring them to be unlawful intruders into office and not to be pilots, copies of which said judgments are hereto annexed and marked 1 and 2, and made a part hereof; that since the date aforesaid the said Falconi, named in said bill, has abandoned all participation in the said frauds of the complainant, and is, and has been, faithfully executing his contract and obligations as a member of said association, and has been perpetually enjoined, and is at this time under final and perpetual injunction, prohibiting him from in any manner embarking again in said scheme of Black and his pretended co-owner in the Mary Lee.

(Signed) RICHARD FRANCIS.

Sworn to and subscribed before me, this 23d March, 1881.

(Signed) THEO. GUYOL, *N. P.*

66 *Rule. Entered and filed March* 23, 1881.

Circuit Court of the U. S., Eastern Dist of La.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et al.* } No. 9282.

On motion of J. R. Beckwith, solicitor for defendants, it is ordered that the motion for injunction herein made by complainant, and the motion to dismiss the bill made by the defendants, be fixed for Saturday, the 26th instant, at 11 a. m., and that complainant be notified hereof.

Marshal's Return.

Received March 24th, 1881, by the U. S. Marshal, and on the 25th day of March, 1881, I served a copy of the within motion on A. G. Brice, Esq., by handing the same to him in person, in the city of New Orleans, La.

(Signed) THOMAS BOSWELL,
Deputy U. S. Marshal.

Motion for Injunction and Motion to Dismiss Bill Re-assigned for Hearing.

Extract from the Minutes. November Term, 1880.

NEW ORLEANS, *Saturday, March* 26, 1881.

Court met pursuant to adjournment.

67 Present: Hon. E. C. Billings, district judge.

No. 9282.

Jas. M. Flinn vs. R. Francis et al.

In this case it is agreed that the complainant's motion for injunction, and the defendants motion to dismiss bill, fixed for hearing this day, be continued till Saturday, 2d April, 1881, at 11 a. m., and that the demurrer herein be taken up and heard at the same time.

Complainant's Motion for Injunction and Defendants' Motion to Dismiss Bill and Demurrer—Continued.

Extract from the Minutes, April 2nd, 1881.

J. M. FLINN
vs.
R. FRANCIS *et al.* } No. 9282.

In this cause it is agreed that the complainant's motion for injunction, the defendants' counter-motion to dismiss bill and demurr be continued until Saturday, 9th instant, at 11 a. m.

Submission of Motion for Injunction, etc.

Extract from the Minutes of April 9, 1881.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et al.* } No. 9282.

This cause came on to be heard on the complainant's motion for a preliminary injunction, the defendants' counter-motion to dismiss the bill and on the demurrer to the bill, and having been

argued by counsel of the parties, respectively, the Court took time to consider.

Order—Demurrer overruled and Injunction pendente lite allowed.

Extract from the Minutes of June 13, 1881.

68 JAMES M. FLINN
vs.
RICHARD FRANCIS *et al.* } No. 9282.

This cause came on to be heard on the application of the complainant for a preliminary injunction and the defendants' demurrer and cross-motion to vacate the restraining order herein, and was argued by counsel. On consideration whereof, it is ordered that the said motion and demurrer of the defendants be overruled, and that they have until next rule day to answer.

It is further ordered that an injunction issue herein *pendente lite*, enjoining and restraining the said defendants in manner and form and to the extent prayed for in the bill of complaint, except that this order is not to be construed to interfere with the prosecution of any suits already commenced in the courts of the State of Louisiana.

Motion and Order for Bond for Costs.

Extracts from the Minutes of June 14th, 1881.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et al.* } No. 9282.

On motion of J. R. Beckwith, solicitor for defendants, and on suggesting to the court that the plaintiff is a non-resident, and, as he verily believes, irresponsible, and without any property in this District or State: It is ordered that the plaintiff give
69 bond, with solvent surety residing within this district, in the sum of two hundred and fifty dollars, conditioned to pay all costs which may be awarded against the complainant in this cause, and that in the event the said bond is not made and filed within fifteen days after the service of this order, that said cause stand dismissed.

Marshal's Return.

Received June 15th, 1881, by the United States marshal, and on the 16th day of June, 1881, I served a copy of the within motion on Richard Francis, plaintiff herein, by handing a copy of the same to A. G. Brice, attorney for the said Richard Francis,

in person, he accepting service of the same for the said Richard Francis.

New Orleans, Louisiana, June 7th, 1881.

(Signed) THOMAS BOSWELL,
Deputy U. S. Marshal.

Affidavit of J. R. Beckwith. Filed June 15th, 1881, and Motion to Modify Injunction and Order of Reference, entered and filed June 15th, 1881.

Circuit Court of the United States, Eastern District of Louisiana.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et al.* } In Equity. No. 9282.

EASTERN DISTRICT OF LOUISIANA:

J. R. Beckwith, being first duly sworn, deposeth and saith, that he is solicitor for the defendants in the above-entitled cause; that he has made diligent inquiry concerning the said James M. Flinn, complainant, and is informed, and verily believes, that he is now residing in Florida, out of this jurisdiction, and insolvent, and that no judgment against him for damages can be collected, even if he was in this district; and further, that he
70 is informed and believes that he is a tool in the hands of said Black, named in said bill, who claims to be owner of a controlling share of said "Mary Lee," and who controls his action, and yet is not by the court decreed a necessary party to this cause.

The result of carrying on this litigation in its present form and with its present parties is to enable the said Black to harass and destroy the rights of the defendants by litigation and escape all liability as a party; that the said Black, within the last year, through an unlawful use of the said "Mary Lee" as a pilot boat, has inflicted on the said defendants a damage exceeding ten thousand dollars, and has involved them in great expense in litigation, and that the said defendants are informed that, under cover of the injunction in this cause, he threatens to again attack defendants in the same unlawful manner; that it is in the power of the said owner of said "Mary Lee" to cause defendants ten thousand dollars damage before the commencement of the next term, and if the injunction in this case should be determined to have been wrongfully issued, the court has placed the defendants in the most unfortunate position of being compelled to submit to wrong and damage without judicial redress, unless the order allowing the injunction is so modified as to require the complainant to give bond in good and sufficient amount, with resident surety, to respond to all damage which said writ may cause, and that the bond shall be ten thousand dollars.

71 And deponent further saith, that for nearly eight months he has been engaged as counsel for the defendants herein, and that he verily believes that he is familiar with the law and the facts involved in this cause, and that upon the facts alone as they will appear in the answer and proof herein, he is of opinion and firmly believes that the injunction in this cause must be dissolved and the bill dismissed, and has so advised his clients; that the defendants believe that the action of the court will work them great injustice, and intend to resist the claim of the plaintiff to the fullest extent which can be attained by the use of all lawful defenses and proper means.

(Signed) J. R. BECKWITH.

Subscribed and sworn before me, June 15th, 1881.

(Signed) T. V. COUPLAND,

Commissioner U. S. Circuit Court, Eastern District of Louisiana.

SAME
vs.
SAME.

And now come the defendants, by J. R. Beckwith, their solicitor, and respectfully ask the court to so modify the order for injunction herein *pendente lite* as to require the complainant Flinn to give bond, with good and solvent surety resident in this district, in the sum of ten thousand dollars, conditioned to pay the defendants all costs and damages which they may
72 suffer in the event that the writ of injunction herein is wrongfully issued and allowed. This motion is based upon the bill, affidavits, and exhibits on the motion herein heretofore made, and upon the affidavit herewith filed.

And, thereupon, it was ordered by the court that the matter be referred to J. W. Gurley, Esq., master in chancery, to fix the amount of the bond to be given by the said complainant.

Master's Report on Reference to Fix Amount of Bond for Injunction. Filed June 17th, 1881.

To the Hon. the Circuit Court, of the United States for the Fifth Circuit and Eastern District of Louisiana:

The case of James M. Flinn *vs.* Richard Francis *et al.*, No. 9282, has been referred to the undersigned master, to fix the amount of bond to be required of complainant on injunction to restrain the defendant, Richard Francis, from interfering with his business, in using the steamboat "Mary Lee" as a pilot boat, etc., etc.

In fixing the amount of the bond, the master has assumed that the bond is to cover damages likely to result to the defendant

from the present time to the 15th of November next, when the matter can be heard by the court.

73 The exhibit annexed to the libel in the case of W. T. Levine *et als. vs.* stm'r "Mary Lee," No. 11,719 of the U. S. District Court, which has been offered in evidence before the master, by defdt. herein, Richard Francis, shows that the statute fees for vessels towed to and from sea by the "Mary Lee" during the last ten days of October, amounted to $371; at this average rate the full month would give..... $1,113 00

The same exhibit shows the fees for November to have been $3,070—as the master makes his estimate to the 15th of that month, he takes ½ of that sum, viz:..... 1,535 00

The testimony shows *is* to be improbable that the vessel can make more than $600 per month during the months of June, July, August, and September.

On this estimate take ½ June—..... 300 00

July, August, and Sept., each $600..... 1,800 00

$4,748 50

In the opinion of the master, a bond of five thousand dollars is sufficient to cover the probable damage, and he recommends that a bond in that amount be required.

The master asks that he be allowed thirty dollars for his services herein.

Respectfully submitted,

(Signed) J. W. GURLEY,
Master, etc.

June 17th, 1881.

Circuit Court.—On reference to Master to fix Amount of Injunction Bond.

74 JAMES M. FLINN
vs.
RICHARD FRANCIS, *et al.*

Defendant's Offer—

Record No. 11719 U. S. district court, Wm. P. Lavine, *et als. vs.* Steam Tug Mary Lee—In connection with affidavit of Richard Francis taken before me this 15th June, 1881.

Affidavits of Richard Francis on file in above cause, with their exhibits—being all of the affidavits offered by defts on hearing of motion for injunction.

Affidavit of J. R. Beckwith filed on 12th June in above cause.

Attest: New Orleans, 15 June, 1881.

J. W. GURLEY, *Master, etc.*

Affidavit of Richard Francis filed before Master on reference to fix amount of Injunction Bond.

JUNE 15, 1881.

Circuit Court of the United States, Eastern District of Louisiana.
In Equity.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et al.*

Richard Francis, being first duly sworn, deposeth and
75 saith: that he is one of the defendants in this cause; that he is the person who subscribed and swore to the libel in the case of W. T. Levine *et als. vs.* the Tug Boat Mary Lee, No. 11719 U. S. district court, eastern dist. of Louisiana, presented to the master; that the matters complained of in the libel in that suit are the acts of the said owner of said Mary Lee, named in the bill of complaint herein, committed by the use of said vessel as a pilot boat between the first of October, 1880, and the ninth of March, 1881; that the schedule annexed to said libel, marked Exhibit A, is, as he believes, correct in the amount of vessels and the draft thereof, with the exception of the fact since discovered that there are vessels which should have been on the list which were omitted; that the statements in said libel are, as he verily believes, correct, and that the affidavits made by him and filed in this cause on the hearing of the motion for injunction herein were and are true, as he verily believes, and that the exhibits are attached to said affidavit are also true as stated in said affidavits.

That from this date up to the first of December next—the months of July and August are months when the arrivals and departures are light and the pilotage fees for the two months are usually about thirty-five hundred dollars per month—that from that time on to the first of January, the total average pilot fees for all vessels amount usually to *the* about thirty-eight
76 thousand dollars, ($38,000.00,) the months of September, October, November, December, January, and February being the best months in the year.

That by the acts of the owner of the Mary Lee during the time referred to from October, 1880, to March, 1881, the defendants were deprived of actual statute pilotage dues exceeding the sum of ten thousand dollars, and suffered other losses in expense of litigation and other losses amounting, as he verily believes, to ten thousand dollars more, making a total of $20,000; that if the injunction in this case permit the said owner of the Mary Lee to use said boat as a pilot boat between this and the time when this cause can be heard, there is no reason to doubt that the said

Black and said Flinn will damage the defendants to a greater sum than the one above named.

That this deponent verily believes that a bond for ten thousand dollars will be an inadequate protection to the defendants, and will not secure them against the loss which will result to them before the first of November next from the protection of the said Mary Lee in an unlawful pilotage business by the injunction in this cause.

(Signed) RICHARD FRANCIS.

Sworn to and subscribed before me this 15th June, 1881.

(Signed) J. W. GURLEY,
Master, etc.

77 *Depositions on part of Complainant on reference before Master to fix am't of the Injunction Bond, 16 June, 1881.*

FLINN
vs.
FRANCIS. } U. S. circuit court.

Thomas J. Irvine, being duly sworn, says that he is a ship broker; has been in this port for seven years, and a member of the firm of Silas Weeks & Co.; says the arrival of foreign vessels at this port commences about the first of October and ends about the first of June; there is no general business doing during the summer months; the lines of steamships that we represent are taken off during the summer; and further he saith not.

(Signed) THOMAS J. IRVINE.

Sworn to and subscribed before me this 16th June, 1881.

(Signed) J. W. GURLEY,
Master, etc.

Leopold Lacombe, being duly sworn, deposes and says that he has been in the ship-brokerage business in this city, on his own account, for the last sixteen years, and is a member of the firm of L. Lacombe & Co.; that he has read the above affidavit of Thos. J. Irvine, and corroborates the same.

(Signed) L. LACOMBE.

Sworn to and subscribed before me this 16 June, 1881.

(Signed) J. W. GURLEY,
Master, etc.

78 Edward P. Norton, being duly sworn, deposes and says that he has been engaged in the ship-brokering business for the past fifteen years, and is a member of the firm of Norton & Bell; that he has read the above affidavit of Thomas J. Irvine, and corroborates the same.

(Signed) EDWARD P. NORTON.

Sworn to and subscribed before me, this 16th June, 1881.
(Signed) J. W. GURLEY,
Master, etc.

John B. Brown, being duly sworn, says that he has been a master mariner trading to this port for about ten years; is familiar with the branch pilotage business; has acted as collector for branch pilots; knows the Mary Lee pilot boat and the nature of the business she has been engaged in; that the boat could not make enough money to pay her expenses in the branch pilotage business during months of July, August, and September; in those months her receipts would not amount to more than $600 per month, and in October and November her receipts would not amount to more than $1,500 per month.
(Signed) J. B. BROWN.

Sworn to and subscribed before me this 16 June, 1881.
(Signed) J. W. GURLEY,
Master, etc.

79 John Glaivey, being duly sworn, deposes and says that he has been steamboating about the passes of the river for about twenty-five years; been captain and pilot of a steamboat in that neighborhood during five years past, and is familiar with the branch pilotage business and the receipts thereof; that he has read the affidavit of John B. Brown, and corroborates the same.
(Signed) JOHN GLAVEY.

Sworn to and subscribed before me this 16 June, 1881.
(Signed) J. W. GURLEY,
Master, etc.

John W. Black, being duly sworn, deposes and says that he is the owner of the other $\frac{7}{8}$ of the str. Mary Lee; that said boat is worth about $42,000, and that the $\frac{1}{8}$ owned by Flinn is worth $\frac{1}{8}$ of that sum; and affiant says that he has read all the foregoing affidavits, and corroborates the same.
(Signed) JOHN W. BLACK.

Sworn to and subscribed before me this 16th June, 1881.
(Signed) J. W. GURLEY,
Master, etc.

Entry in Chancery Order Book, June 17th, 1881.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et al.*

The parties in interest are hereby notified that J. W.
80 Gurley, master, to whom was referred the matter of fixing

the amount of bond for injunction in this case, has this day filed his report.

Order on Master's Report.

Extract from the minutes. April Term, 1881.

NEW ORLEANS, FRIDAY, *June 17th*, 1881.

Court met pursuant to adjournment. Present: Hon. E. C. Billings, district judge.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et al.* } No. 9282.

Upon consideration of the report of J. W. Gurley, master, this day filed, to whom was referred the motion of the defendants to fix amount of bond to be required of the complainant, on injunction to restrain the defendant, Richard Francis, from interfering with his business in using the steamboat Mary Lee as a pilot boat, etc., the court adopts the conclusion of said master and orders the said complainant to furnish bond in the sum of $5,000, conditioned as prayed for in said defendants' motion of date 15th June, 1881.

Whereupon the counsel for the complainant offered J. W. Black as surety on said bond, and the said surety was accepted and the bond approved by the court.

A fee of $30, to be taxed as costs, is allowed the said master for his report.

81 *Bond to Respond in Damages. Filed June 17th*, 1881.

Know all men by these presents that we, James M. Flinn as principal and John W. Black as surety, the latter of the city of New Orleans and State of Louisiana, are held and firmly bound unto Richard Francis and others, the defendants in the case of James M. Flinn *vs.* Richard Francis *et als.*, No. 9282 of the docket of the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, in the sum of five thousand dollars, lawful money of the United States of America, to be paid to the said Richard Francis and others aforesaid, their heirs, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Done and signed at New Orleans on this 17th day of June, in the year of our Lord one thousand eight hundred and eighty-one.

Whereas, the said Circuit Court of the United States for the

Fifth Circuit and Eastern District of Louisiana did, on the 13th day of June, 1881, cause a preliminary injunction to issue in favor of plaintiff against the defendants in the said suits of James M. Flinn *vs.* Richard Francis *et al.*

Now the condition of the above obligation is that we, the above-bound James M. Flinn and John W. Black, will well and
82 truly pay to the said Richard Francis and others, the said defendants in said suit, all damages which they may sustain in consequence of said injunction being granted, should the same be hereafter dissolved.

(Signed) JAMES M. FLINN,
By JOSEPH P. HORNOR, *Atty.*
(Signed) JOHN W. BLACK.

Order on Bond for Costs.

Extract from the Minutes, June 17th, 1881.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et al.* } No. 9282.

In compliance with order herein made on the 14th June, 1881, the complainant this day appeared in open court by his solicitor, Joseph P. Hornor, and furnished bond for costs in the sum of $250, with John W. Black as surety, who is accepted by the court.

Bond for Costs. Filed June 17th, 1881.

UNITED STATES OF AMERICA, } *ss:*
Eastern District of Louisiana, }

Personally appeared before *more* me the undersigned, United States Commissioner for the Eastern District of Louisiana,
83 aforesaid, James M. Flinn, by Joseph P. Horner, his att'y, as principal, and John W. Black as surety, who do hereby acknowledge themselves, jointly and severally, to be indeted unto the clerk of the U. S. Circuit Court, Eastern District of Louisiana, in the full sum of two hundred and fifty dollars, lawful money of the United States, to be levied of their goods, chattels, lands, and tenements, for the use of the said clerk, and defts in suit hereinafter named, and for the payment whereof they jointly and severally bind themselves, their heirs, executors and administrators firmly by these presents.

Whereas, in the matter of James M. Flinn vs. Richard Francis et al., No. 9282, of the docket of the Circuit Court of the United States for the Eastern District of Louisiana, a bill has been filed on behalf of James M. Flinn.

This obligation to be null and void on condition that the said

James M. Flinn shall abide by the final decree rendered in the cause, and pay all such costs, expenses, and damages as shall be awarded by the court, upon the final decree, whether it is rendered in the original or appellate court; otherwise, this obligation to remain in full force and virtue.

(Signed) JAMES M. FLINN. [L. S.]
By JOSEPH P. HORNOR, *Att'y.*
(Signed) JOHN W. BLACK. [L. S.]

Signed and sealed at the city of New Orleans, this 17th June, 1881.

In presence of (Signed) K. LOEW,
U. S. Commissioner in and for the Eastern Dist. of La.

84 *Injunction.*

UNITED STATES OF AMERICA.

The President of the United States

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et al.* } No. 9282.

To Richard Francis, individually and as agent, greeting:

Whereas, it has been represented to us in our said circuit court, on the part of James M. Flinn, in a bill in equity, lately exhibited against you and others, touching certain matters and things therein set forth;

Now, therefore, in consideration of the premises, and of the allegations in said bill contained, you, the said Richard Francis, your attorneys, and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, that you absolutely refrain and desist from interfering with the business of using the steamboat Mary Lee as a pilot boat, and from interfering with officer Captain George A. Sheldon, of said pilot boat, and from interfering with Hiram Follett, Pliny Cox, and Geo. A. Falconem, branch pilots of the port of New Orleans, part owners of said pilot boat Mary Lee, from exercising and performing the duties of their said office as branch pilots of said port of New Orleans, while in the service of the complainant.

85 Witness, the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 30th day of June, in the year of our Lord 1881.

[SEAL.] (Signed) T. V. COUPLAND,
D'y Clerk.

Clerk's office: A true copy of the original issued New Orleans, July 7th, 1881.

T. V. COUPLAND, *D'y Clerk.*

United States Circuit Court,

JAMES M. FLINN
vs.
RICHARD FRANCIS *et al.* } No. 9282.

Injunction to Richard Francis.

Received June 30th, 1881, by the U. S. marshal, and on the same day, month and year, I served a true copy of the within injunction on the within named Richard Francis, by handing the same to him in person in the city of New Orleans.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

86 *Stipulation. Filed July 2nd*, 1881.

Circuit Court of the United States, Eastern Dist. of Louisiana.

JAMES M. FLYNN
vs.
RICHARD FRANCIS *et al.* } No. 9282.

It is hereby agreed that the time to answer in this cause be extended until the first Monday in November, 1881, and that no decree *pro confesso* for want of an answer be entered before that time.

N. O., 7 | 2 | 81.

(Signed) JOSEPH B. HORNOR and
F. W. BAKER,
For Comp'ts.

Answer. Filed November 10th, 1881.

Circuit Court of the United States in and for the Eastern District of Louisiana. In Equity. No. 9282.

The joint and several answer of Richard Francis, W. T. Levine, C. W. Read, Wm. F. Higgins, John McLaughlin, Joseph Smith,
87 John Ervine, R. M. Wilson, A. A. Douglass, Charles Dennis, Philip Wuertz, Thomas D. Lewis, D. B. Morgan, Joseph Preble, Robert H. Telford, Gustave Gersdorf, Edward Breen, Francis Bailey, Oscar Shultz, Walter Jarvis, Thomas Craig, John Gersdorf, John Ahern, Wm. E. Pendleton, Henry Buttcher, Benjamin S. Ames, Peter Douhan, Bernard Michel, Francis Lory, Charles S. Clark, E. C. Bannon, Francis Williams, A. L. Cloutman, Joseph Preble, Thomas Wilson, Robert Wilson, James W. Lyons, Jas. Redman, William B. Turley, and George

Osgood, defendants to the bill of complaint of James M. Flinn, complainant.

The said defendants, reserving unto themselves, now and at all times, the benefit of all and all manner of causes of demurrer and exceptions by reason of the many uncertainties, insufficiencies, etc., for answer to said bill of complaint, or to so much thereof as they are advised that it is necessary for them to make answer unto, say: That they are not advised, except by said bill of complaint, that the complainant is one one-eighth owner of the boat called Mary Lee, but that, on the contrary thereof, they
88 are informed and verily believe that the said complainant is not, and at the time of the filing of the bill herein was not in fact the owner of any interest in said vessel, and that his pretense of ownership therein is a sham and fraud, and in all things false, and therefore deny that he is an owner of any share, right, or interest in said vessel.

And further answering, they deny that the said vessel ever was lawfully a pilot boat, or ever had any right or authority to cruise as such.

And further answering, said defendants deny that the navigation of the South Pass was at any time, either lawfully or in any manner, under or subject to the control or direction of the Secretary of War or the War Department by virtue of the act of June 1, 1874, or by any other law or act of Congress; and aver and say, that as they are advised and verily believe, the averment in said bill that the Secretary of War can lawfully make rules to control or govern the navigation of the South Pass of any binding effect or import, is based upon a misunder-
89 standing of the laws of the United States and the powers and authority of the War Department thereof.

And further answering, said defendants say that it is not true that the Mary Lee ever was at any time lawfully navigated as a pilot boat in the waters of Louisiana; that said vessel never was at any time owned, in whole or in part, by any licensed pilot qualified under the laws of Louisiana, nor was said vessel ever exclusively used as a pilot boat, as required by the laws of said State.

That the statement that Pliny Cox and Hiram Follett were either of them licensed pilots under the laws of said State, and that at the time said bill was filed said complainant, if he knew anything of the contents of said bill, well knew that said allegation was false; that the truth is that they, and both of them, were from the first lawless intruders into the office of branch pilots, and by due and lawful proceedings had in the
90 courts of the State of Louisiana of competent jurisdiction, were each of them adjudged, on final judgment, to be such lawless intruders, and enjoined from acting as pilots, which said

decrees are both in full force and effect, and have never been avoided or reversed.

That the said A. Falconi was also, before the injunction in this cause, in a proceeding in due form in the civil district court of the parish of Orleans, finally and perpetually enjoined by formal decree from in any manner aiding the said Black or Flinn in any attempt to use said vessel as a pilot boat; and further, that at the time said bill was filed herein, the said Falconi was not on board said vessel as pilot, and at no time since that date has he been in any manner attached to that vessel as a pilot, or in any other character or capacity.

And further answering, defendants say, that they have not instituted and suits against the said Flinn to the best of their recollection and belief, nor to the best of their information and belief has the said Flinn made any request or demand of them
91 in any form; that the said complainant is not a resident of this State, as they are informed, and is supposed to reside in some part of the State of Florida; that defendants have no knowledge, information, or belief that the said Flinn has been in this State or within the jurisdiction of its courts for years now last past, except, perhaps, temporarily, or that he ever was or claimed to be a branch pilot of the port of New Orleans, or could act as such without entering into active crime and violation of the penal laws of this State; that it is true that suits in due form have been entered in State courts of competent jurisdiction against J. W. Black, Geo. A. Sheldon, Follett, Cox, and Falconi, and that a large number of said actions have terminated in final decrees against the defendants therein, whereby the said Follett, Cox, and Falconi, have been perpetually enjoined from aiding said Black or the said complainant in any act of using the said "Mary Lee" as a pilot boat, or in the manner set forth in said bill of complaint herein, as will fully and at large
92 appear by the exhibits annexed to the affidavit of Richard Francis, now on file in this cause, to which as well as to the record of said cause, to which defendants refer and make the same a part of this answer.

And further answering defendants say that it is true that the said J. W. Black as controlling manager and owner of the said "Mary Lee" has been engaged unlawfully and in violation of the writ of injunction issued by this court, No. 9111 of the docket of this court, R. Francis *et al. vs.* J. W. Black *et al.*, in towing to sea over pilotage ground at the mouth of the Mississippi river vessels drawing over twelve feet of water without having a branch pilot on board of such vessels.

That it is true that the said Hiram Follett and Pliny Cox were at all times unlawful intruders into the office of branch pilots of the port of New Orleans, and have respectively been so adjudged

by the solemn judgment of the civil district court for the
93 parish of Orleans, the record of which decrees and judgments now exist and will be exhibited and produced herein.

That it is true that the said Falconi had no right to pilot vessels through the passes of the said river and into the port of New Orleans for said complainant, and had by lawful contract so bound himself, and that by the final decree of the said civil district court he is enjoined from so doing, which said judgment is in full force and effect. The record thereof will be produced and exhibited to the court herein, and to which defendants at all times refer.

And further answering, said defendants say that the averment in said bill that they or any of them did on the 29th day of May, 1879, or at any other time enter into any combination or unlawful conspiracy against the said complainant or any other person is false and untrue; that the only association which has at any time existed between said defendants was and is in all
94 things lawful, in all things authorized by the laws of this State, and was made and entered into by open public act, and that there is nothing in said contract of which any citizen of Florida or any other State can complain as unalwful or unjust, or contrary to good morals.

And further answering, defendants say that if the said allegations of the said bill of complaint be true as therein stated, wherein it is averred that the said Follet, Cox, and Falconi are or were branch pilots of the port of New Orleans, then and in that case each and all of said persons are and must be citizens of the State of Louisiana, resident therein, the said citizenship and residence being made an indispensable qualification for such duty and office by the laws of said State. That the fact is that each and all of said last-named persons are, and at the time when said bill was exhibited were, respectively, citizens and residents of the State of Louisiana, and of the same State with the said defendants, and each and all of them, and were and are, each of
95 them, the said Pliny Cox, the said Hiram Follett, and the said George A. Falconi, material and interested parties to the controversy and matters set forth in said bill of complaint, and by the complainant's own showing have material interests to be affected by the determination of this cause, and are material and necessary parties complainant herein, and that the controversy herein cannot be determined finally without they are made parties complainant herein, and that this action is fatally defective for want of material parties, without they and each of them are joined with the complainant herein. Wherefore said defendants set up said matters as a plea herein, as allowed by the rules of this court in equity, and do suggest that said action is defective for want of the said Pliny Cox, the said Hiram Follett, and the said Geo. Falconi as parties hereto, and that this honorable

court is wholly without jurisdiction to hear and determine
96 this cause, by reason of the fact that said last-named persons are, and each of them is, and for all time since the filing of the bill herein, a citizen and resident of the same State with each of said defendants, to wit, the State of Louisiana.

And further answering, said defendants say that the said John W. Black, as by said bill appears, and before the date of the filing of said bill, was, and at all times since that time has been, a citizen and resident of the said State of Louisiana, the same in citizenship and residence as each of said defendants, and again suggest that this suit is defective, for that the said Black has material interests in the matters upon which this court is called to adjudicate herein, and that although averred to be an owner to a large extent in the said Mary Lee, and a co-owner therein, and that while a material and necessary party to this cause is not joined therein as a co-complainant, and said defendants plead the same herein, and ask that the same be taken and stand the same in all respects as if formally pleaded.

97 And further answering, defendants say that they are advised and informed, and verily believe, that all and singular the matters in said bill of complaint contained and set forth do not state and set forth any matters within the equity cognizance of this court, and that all and singular the matters in said bill of complaint contained not herein or hereby answered, denied or traversed and avoided, are not true as in said bill of complaint averred and set forth. All of which said defendants will aver, prove, and maintain, as the court shall require and direct.

Wherefore the premises considered, said defendants pray that they may be hence dismissed, with their just and reasonable costs herein most unreasonably caused and incurred.

And will ever pray, &c.

(Signed) J. R. BECKWITH,
Solicitor and Counsel for Defendants.

State of Louisiana, Eastern District of Louisiana, Parish of Orleans.

98 Richard Francis, being first duly sworn, deposeth and saith, that he is one of the defendants named in the foregoing answer; that he is the agent of the other defendants, members of the Association of Branch Pilots of the Port of New Orleans; that he knows the contents of the foregoing answer, and that the matters therein stated are true, except as to such matters as are therein stated upon information and belief, and that as to all such matters, he verily believes the same to be true as therein stated.

(Signed) RICHARD FRANCIS.

Sworn to and subscribed before me, notary, this 9th day of November, A. D. 1881.

[SEAL.] (Signed) A. G. LAPICE,
Notary Public.

NOTE: It is stipulated and agreed that by reason of the number of the defendants, this answer may be verified by Richard Francis, agent of defendants.

N. O., 9 November, 1881.

(Signed) A. G. BRICE,
and JOSEPH P. HORNOR,
and F. W. BAKER,
For Plff's.

99 Extract from Chancery Order Book. November 10th, 1881.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et al.* } No. 9282.

The defendants herein by J. R. Beckwith, their solicitor, have this day filed their answer to the complainant's bill of complaint.

Replication. Filed December 9th, 1881.

United States Circuit Court, Eastern District of Louisiana. In Chancery.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et al.* } No. 9282.

To the honorable the judges of the circuit court of the United States for the eastern district of Louisiana:

The replication of James M. Flinn, complainant to the answer of Richard Francis *et als.*, defendants.

This repliant, saving and reserving unto himself all, and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith, that he will aver and prove his said bill to be true, certain, and sufficient in law, to be answered unto, and that the said answer of the said de-
100 fendants is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever, in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All matters and things this repliant is and will be ready to aver and prove as this Hon. Court shall

direct, and humbly prays as in and by his said bill he hath already prayed.

(Signed) A. G. BRICE,
JOSEPH P. HORNOR,
and F. W. BAKER,
Solicitors.

Extract from Chancery Order Book, December 9th, 1881.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et al.* } 9282.

James M. Flinn, complainant herein, by A. G. Brice, Joseph P. Hornor, and F. W. Baker, his solicitors, has this day filed his replication to the answer of Richard Francis *et al.*, defendants herein.

Motion and Order appointing F. A. Woolfley Examiner. Entered and filed Dec. 16th, 1881.

101 Circuit Court of the United States, Eastern District of Louisiana.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et al.*

On motion of J. R. Beckwith, sol. for defendants, the sol. for complainant consenting thereto, it is ordered that F. A. Woolfley, Esq., be appointed examiner to take and return the evidence and proofs in this cause.

Commission for Plaintiffs, issued December 26th, 1881. Returned and filed January 4th, 1882.

Circuit Court of the United States for the Fifth Judicial Circuit, holding sessions in and for the District of Louisiana.

To any United States Commissioner in Pensacola, Florida:

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that you call and cause to come before you James M. Flinn, of Pensacola, Florida, and him duly examine on the annexed in-
102 terrogatories, on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein James M. Flinn is plaintiff and Richard Francis *et al.* are defendants: and the same examination, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New Orleans this 26th day of Dec., anno Domini 1881, and the 106th year of the independence of the United States of America.

[SEAL] (Signed) T. V. COUPLAND, *D'y Clerk.*

Commissioner's fee, $5.00, paid by plaintiff.

United States Circuit Court, Eastern District of Louisiana.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et als.* } No. 9282.

Interrogatories to be propounded to and answered under
103 oath by James M. Flinn, complainant herein, a witness for himself, residing at Pensacola, Florida, more than one hundred miles from the place where this court holds its sittings, to be taken under and by virtue of the annexed commission:

First. What is your full name, age, residence, and occupation?

Second. Are you an owner of any part of the steamboat Mary Lee? If yea, how large a part? How long have you been an owner in said steamboat?

Third. Who manages the affairs of said steamboat Mary Lee? How long has he done so? Has he ever rendered you any account of her earnings? If yea, state when, and annex such accounts to your answer.

Fourth. Do you know J. C. Keyser, who lives in Pensacola? If yea, how long have you known him and how well?

Fifth. Have you ever had any conversation with said J. C. Keyser relative to your ownership of part of the steamboat Mary Lee? If yea, state when and where, and who was present, and all that was said upon that subject.

104 *Sixth.* Have you or not ever denied to the said J. C. Keyser that you were a part owner in the steamboat Mary Lee? If yea, when and where and under what circumstances?

Seventh. J. C. Keyser has been sworn and examined as a witness in this case, and in the course of his examination he has testified that about twelve months ago he had a conversation on the Polafax wharf, in Pensacola, in which you stated to him that you did not then retain an interest in the steamboat Mary Lee, and that you never did own an eighth interest in her. Did you ever make such a statement to said J. C. Keyser?

Eighth. J. C. Keyser has further testified that he, at that time, asked you about your interest in the steamboat Mary Lee for the reason that he wanted to know; that he had understood there was some trouble in New Orleans between the pilots and Mr. Black, and that there was a question pending as to the owner-

ship, and that probably something might hinge on that. Did said Keyser ever make such a statement to you, or give
105 you such a reason for making inquiries of you as to your ownership in the steamboat Mary Lee? Did said Keyser ever make inquiries of you as to your said ownership? If yea, when and where and under what circumstances?

Ninth. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

(Signed) A. G. BRICE,
JOSEPH P. HORNOR, AND
F. W. BAKER,
Solicitors for Complainant.

12 | 21 | 81.

Motion and affidavit for a commissioner waived, and it is agreed that the commission may be addressed to any United States commissioner in Pensacola, Florida.

New Orleans, 26 December, 1881.

(Signed) J. R. BECKWITH,
Sol. for Def'ts.

Circuit Court of the United States, Eastern District of Louisiana.

106 JAMES M. FLINN
vs.
RICHARD FRANCIS *et al.* } No. 9282.

The defendants except to each and all of the several interventions propounded by the plaintiff, and reserve all and all manner of exceptions and objections to said witness, and said questions for cross-interrogatories propounds:

1. How long have you resided in Pensacola, and what has been your occupation during the entire period?

2. If you answer that you own any part or portion of the Mary Lee, state when you bought the same, from whom you bought the same, what price you paid for the same, where the written conveyance of title was executed, and produce and attach the bill of sale to your deposition.

3. Have you in your possession any letters written to you by J. W. Black relating to the Mary Lee, or to your interest in the Mary Lee, or the manner in which Black was using the boat? If yea, attach the same to this deposition, together with the copies of your answers and letters to Black.

107 4. Are the alleged statements of account produced by you true and genuine? If yea, produce the letters in which the same were transmitted to you.

5. Have you received any letters or telegrams from J. W. Black relative to this cause or to the depositions? If yea, annex the letters to your deposition. If you answer that you have lost or destroyed the letters or telegrams, state why you destroyed them; if lost, under what circumstances you lost them, and state fully and in detail all of the contents of such letters, documents, or telegrams.

(Signed) J. R. BECKWITH,
Sol. for Def't.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et al.* } No. 9282.

United States Circuit Court. Eastern District of Louisiana.

To first interrogatory, witness James M. Flinn, answering, saith:

1st. My full name is James Moore Flinn, aged 38 years, and I reside in Pensacola, State of Florida, and by occupation
108 am master of steam vessel and pilot.

2d. I am an owner of one-eighth of the steamboat Mary Lee, and have been such owner since she was built in 1877.

3d. J. W. Black, managing owner, manages her, and has done so since she was built. He has rendered an account of her earnings up to 1881, and I expect to get an account of that year's earnings in present month. I do not remember the date of my receiving accounts of preceding years. Some or all were received in 1881, and at different dates of said year. I append hereto the accounts I have in response to the interrogatory and mark them A, B, C, and D, respectively showing credits, &c.

4th. I do know J. C. Keyser, of Pensacola, and have known him since 1872, and have been deceived in the business transactions I have had with him.

5th. Only conversation with J. C. Keyser in relation to my ownership of the part of the steamboat Mary Lee was in answer to a direct question by him of me as to that ownership by me.
This question by him was some time in August or Sep-
109 tember last at the steamer Neptune's landing place at the railroad wharf in Pensacola, Florida. At that time Captain J. C. Keyser came down the railroad wharf with a Captain Jackson of New Orleans, and introduced me to the Captain Jackson. He, Keyser, then called me aside, along side a box car, and asked me if I still owned an eighth in the Mary Lee. He stated that he knew I did own said interest, but did not know whether

I had sold it or not. He gave me no reason for asking the question, but began abusing J. W. Black, and I turned and left him and went to my boat, some 30 or 40 yards distant, at an adjoining wharf. No one was present at our said conversation except him and I.

6th. I have never denied my ownership to J. C. Keyser under any circumstances or at any time.

7th. I have never made such admission to J. C. Keyser at any time, and it would be false in me to have made such admission, and I have had no conversation with him in relation to my said ownership save and except what I have stated above, and
110 that statement covers and relates all that was said by either of us.

8th. I have already stated when, where, and under what circumstances the conversation occurred, and have stated all that occurred. He gave me no reason for asking the question as to my ownership in the Mary Lee.

9th. I cannot recall any other matter at present material to the parties, or either of them, to this issue, unless it be that one of the New Orleans Pilot's Association made a visit to this city for the purpose of purchasing my said interest in said steamboat Mary Lee, and I stated to him fully the reason why I could not and would not sell said interest. One especial reason assigned by me was that, if my health permitted, I expected to go back to New Orleans.

(Signed) JAMES M. FLINN.

Sworn and subscribed before me January 2d, 1882.

[SEAL.] (Signed) WALTER TATE,
U. S. Com'r North'n Dist. of Fla.

111 *Answers of James M. Flinn to Cross-Interrogatories in foregoing stated cause.*

1st x. To first cross-interrogatory witness James M. Flinn answering, saith—

I arrived in Pensacola on 15th day of July, 1872, and took charge of steam tug Mary Louisa as master, and continued in that employ until Aug. 1877. Then went to N. Orleans in the employ of J. W. Black as master of stmr. "Grey Hound," and so remained until the Mary Lee came out. Then I took charge of her as master and owner of one-eighth interest in her, and remained in Mr. Black's employ until I was taken sick in 1879. It was understood before I left Pensacola that when the Mary Lee was built I was to be the owner of one-eighth interest.

2d x. I bought my interest from J. W. Black while in N. Orleans in 1877, and paid for my interest at the rate of about $\$2\frac{1}{1000}$ for all delivered in N. O. Since then improvements have

been made, bringing her cost up to about $30,000. Her
112 original enrollment at the custom-house in Philadelphia shows me as owner of one-eighth interest, and beyond that I have not received a conveyance of title. She was so enrolled by direction of J. W. Black, in compliance with agreement between us, which I have already related.

3rd x. I did receive letters from J. W. Black, reporting operations of the Mary Lee, but did not preserve them, nor did I preserve copies of my answers to his letters.

4th x. The accounts appended by me are the true and genuine accounts received by me from J. W. Black, but I have preserved no letters transmitted to me with them.

5th x. I received one letter from J. W. Black, announcing that he would have to call on me for my testimony, but I did not preserve the letter. It was with reference to the proof of my ownership of my interest. I have received no telegrams from him in relation to these matters or any of them. I destroyed the last letter from J. W. Black, above referred to, because I did not
113 deem it of sufficient importance to be preserved. Besides, I am not in the habit of preserving my letters unless the subject-matters seems especially valuable to my interest. I do not remember, but presume I destroyed it immediately after reading it.

(Signed) JAMES M. FLINN.

Sworn to and subscribed before me this 2nd day of January, 1882.

[SEAL.] (Signed) WALTER TATE,
U. S. Commissioner for Northern District of Florida.

UNITED STATES OF AMERICA,
Northern District of Florida.

At Pensacola, Florida:

I, Walter Tate, a commissioner appointed by the Circuit Court of the United States, in and for said district, do hereby certify that under and by virtue of the commission hereto annexed, I have this day caused James M. Flinn, the witness therein named, to appear before me, at my office, in Pensacola, in said district, and that after he had been by me first carefully cautioned and sworn to speak the truth, the whole truth, and nothing but the
114 truth, he answered the interrogatories hereto annexed (direct and cross-interrogatories) as herein appears, and that his said answers thereto were by me then and there reduced to writing by me, as near as practicable in the language of the said witness, and that after his said answers were then and there carefully read over to him by me, he approved and signed the same then and there in my presence.

In testimony whereof, I hereto affix my hand and seal this the 2nd day of January, A. D. 1882.

[SEAL.] (Signed) WALTER TATE,
United States Commissioner,
in and for the Northern District of Florida, as aforesaid.

115 A.

TOW-BOAT MARY LEE.

In account with J. W. BLACK.

1877.			
Nov. 1.	To cash paid ½ expenses of coal-yard, at Eadsport		$375 00
	" " 3,138 bbls. coal @ 45c		1,412 00
14.	" " J. R. Warner		4 80
	" " ⅓ telegraph bill for Nov		33 33
	" " Woodward & Wright		159 37
Dec. 1.	" " B. D. Wood & Bro.		467 98
	" " L. Johnson		13 05
	" " E. H. Flynn		21 75
	" " J. N. Howard		41 04
	" " S. Dufreche		4 60
	" " Portage bill Nov.		652 69
	" " J. N. Howard		38 97
	" " Ruth & Mayer		16 00
	" " Assessment to Asso'n Cylops & Sanford		495 65
31.	" " Portage bill		664 91
	" " L. Johnson		6 15
	" " J. R. Warner		4 50
	" " F. St. Martin		6 00
	" " 1 day laid-up time		40 00
1878.			
Jan. 12.	" " ⅓ of coal bill		33 75
31.	" " 31 days laid-up time, 40		680 00
Feb. 28.	" " Woodward & Wright $32.41; 207.65		250 06
	" " J. Meagher		10 00
	" " E. H. Flynn		33 43
	" " J. N. Howard		30 23
	" " Portage bill, per order		36 45
	" " 225 bbls. coal @ 45c.		101 25
	" " ⅓ of tow-boat expenses account		237 47
	" " ⅓ of tow-boat expenses, association balance		273 16
	To amount forward		$6,143 69

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1878.			
Feb. 28.	To amount forward		$6,143 69
	To cash paid E. H. Flynn		10 37
	" " Rice, Born & Co		1 25
	" " Adolph Jacob		50
	" " Portage bill for Jan		563 14
	" " J. N. Howard		17 13
	" " ⅛ assessment to Asso'n		124 18
Mch. 16.	" " Portage bill for Feb		710 51
	" " Woodward & Wight		208 07
	" " Order Capt. Flynn		7 00
	" " J. R. Warner		2 00
	" " L. Johnson		3 75
31.	" " L. Johnson		3 18
	" " J. R. Warner		9 00
	" " J. N. Howard		62 90
	" " J. Hennessey & Bro		6 29
	" " W. A. Horth		1 00
	" " Woodward & Wight		149 87
	" " W. L. Wittich		2 25
	" " Portage bill for Mch		689 71
	" " ⅛ assessment to Asso'n		158 53
April 1.	" " ⅛ of tonnage account		206 10
10.	" " N. Glasser		55 95
	" " Ocean Dry Dock		300 46
31.	" " L. Johnson		14 80
	" " Woodward & Wight		106 84
	" " J. R. Warner		8 75
	" " Portage bill for April		671 07
	" " D. C. McCann & Son		23 16
	" " J. N. Howard		19 43
	" " N. Glasser		15 30
	" " Rice, Born & Co		5 00
May 1.	" " B. D. Wood & Bro., prop., coal bill		201 66
20.	" " Spearing & Co		38 50
	" Amount forward		$10,541 34

117

1878.			
May 20.	To amount forward		$10,541 34
	To cash paid orders Capt. Flynn		168 59
31.	" " ⅛ coal bill		208 35
	" " Woodward & Wight		155 84
	" " J. N. Howard		61 21
	" " J. R. Warner		15 90
	" " Portage bill		529 75

1878.				
May 31.	To cash paid	L. Johnson		$6 50
	" "	⅓ of coal of association		1,112 06
			$22 90	
June 1.	" "	E. H. Flynn	19 53	
				42 43
	" "	J. Robinson		15 92
30.	" "	Portage bill for June		621 25
	" "	Woodward & Wight		118 30
	" "	Lewis Johnson		11 10
	" "	J. R. Warner		22 50
	" "	J. N. Howard		31 92
	" "	Propn. of coal		862 54
	" "	Propn. disch'g barge		69 05
July 31.	" "	Woodward & Wight		146 09
	" "	Lewis Johnson		275 00
	" "	R. P. Ryan		2 90
	" "	Portage bill, July		603 25
			$15 50	
	" "	Orders Capt. Flynn	15 50	
				31 00
	" "	J. N. Howard		44 58
	" "	J. R. Warner		32 10
	" "	Order, Captn. Flynn		13 00
	" "	Coal bill, Lambert & Co.		147 62
Aug. 27.	" "	Lewis Loison		4 30
	" "	Woodward & Wight		142 64
	" "	J. R. Warner		39 00
	" "	Zelkey and Donnell		17 50
	" "	J. N. Howard		40 61
	" "	Lewis Loison		7 95
	" "	Portage bill for August		672 75
	Amount forward			$16,904 84

118

1878.				
Sep. 30.	To amount forward			$16,904 84
	To cash paid	Zekey & Donald		10 25
	" "	F. St. Martin		8 35
	" "	order Captn. Flynn		5 33
	" "	S. Dufrechi		27 41
	" "	E. C. Pendleton		6 25
	" "	Woodward & Wight		158 55
	" "	Portage bill for Sepr.		676 07
	" "	Lewis Johnson		39 20
	" "	J. R. Warner		24 00
	" "	Lewis Johnson		7 75

1878.				
Sep. 30.	To cash paid	order Captn. Flynn		$7 00
Oct. 31.	"	"	Woodward & Wight	275 69
	"	"	Zekey & Donald	357 16
	"	"	orders, Captn. Flynn	152 15
	"	"	Henry & Dunn	1 14
	"	"	Jas. Loison	25 75
	"	"	U. S. Custom House	81 85
	"	"	Vallette Dry Dock	57 87
	"	"	Portage bill Oct. and Nov.	655 45
	"	"	J. Dubarry	19 98
	"	"	J. R. Warner	29 00
	"	"	Ths. Holten	62 50
	"	"	Lewis Johnson	9 05
	"	"	Simon Dufrechi	24 93
	"	"	Jas. M. Flinn, sundries	106 80
Nov. 30.	"	"	watchman, Oct.	30 00
	"	"	order, Capt. Flynn	24 00
	"	"	watchman, Nov.	25 00
	Am. forward			$19,807 32

119 B.

TUG BOAT MARY LEE.

In account with J. W. BLACK.

Continued.

1878.				
Nov. 30.	To amount forward			$19,807 32
	To cash paid	Zekey & Donald		6 06
	"	"	21 days laid up time, 40	840 00
	"	"	assessment to association	80 85
Dec'r 31.	"	"	31 days laid up time, 40	1,240 00
	"	"	⅓ assessment to association	126 32
	"	"	Woodward & Wight	4 25
	"	"	Vallette Dry Dock	9 35
1879.				
Jan'y 31.	"	"	Thos. Holton	22 00
	"	"	Woodward & Wight	16 40
	"	"	L. Loison	11 00
	"	"	watchman for Jan'y	25 00
	"	"	31 days laid up time, 40	1,240 00
	"	"	⅓ of assessment to asso'n	119 68
Feb'y 28.	"	"	28 days laid up time, 40	1,120 00
	"	"	⅓ assessment to association	103 42
	"	"	John Thompson, (Dec'r)	45 25
	"	"	watchman, (Dec'r 10th)	25 00

1878.				
Feb'y	28.	To cash paid Henry Bitters		$10 25
		" " watchman for Feb'y		25 00
M'ch	31.	" " assessment to association		99 72
		" " 31 days laid up time, 40		1,240 00
		" " watchman for March		25 00
		" " W. F. Gerard		3 35
Ap'l	30.	" " assessment to association		112 57
		" " 30 days laid up time		1,200 00
		" " watchman for April		25 00
		" " Woodward & Wight		6 40
		To amount forward		$27,589 19

120	1879.			
	Ap'l	30. To amount forward		$27,589 19
		" commission on $35,489.25 @ 5 per ct		1,774 45
		" balance		6,125 71
				$35,489 25

Cr.

1877.				
Dec'r	31.	By prop'n of coal sold asso'n		$659 25
		" " of towages, (asso'n)		2,201 86
1878.				
Jan'y	31.	" " " "		3,063 42
		" " coal sold, (asso'n)		300 00
Feb'y	7.	" cash rec'd from towages at Pensacola		165 00
		" prop'n of towage account		2,605 22
	16.	" cash for use of hawser		10 00
	28.	" prop'n of towages, (asso'n)		1,765 69
M'ch	13.	" cash from L. Wittich		844 02
		" " for use of hawser		30 00
	31.	" prop'n of towages (asso')		2,109 35
		" " " account		2,467 01
May	28.	" cash for use of hawser		100 00
Aug.	21.	" prop'n of towage account		5,424 59
Nov.	30.	" prop'n of towages (asso'n)		1,481 96
Dec'r	31.	" " " "		2,653 79
1879.				
Jan'y	31.	" " " "		1,902 25
Feb'y	28.	" " " "		1,324 69
M'ch	31.	" " " "		1,725 45
Ap'l	30.	" " " "		1,359 39
		" " towage account		3,296 31

E. & O. E., New Orleans, April 30th, 1879.

C.

121 TUG MARY LEE

In account with J. W. BLACK.

1880.				
Jany. 31.	To paid	assessment to association	$221	17
	" "	portage for January	592	55
	" "	orders to Capt. Pendleton	94	17
	" "	paid J. Dubarry	36	81
	" "	Woodward & Wight	132	42
	" "	David Shean	4	00
	" "	J. R. Warner	5	56
	" "	Peter Matz	8	80
	" "	Westerfield & Butler	3	40
	" "	F. S. Martin	29	95
	" "	P. C. Marvy	1	25
Feby. 29.	" "	assessment to association	186	68
	" "	Westerfield & Butler	5	00
	" "	J. R. Warner	5	50
	" "	J. Dubarry	43	77
	" "	N. O. Foundry	40	19
	" "	Portage for February	634	13
	" "	order Capt. Pendleton	6	67
	" "	" " Walker	30	00
	" "	Woodward & Wight	233	17
Mar. 31	" "	" "	160	83
	" "	Portage bill for March	573	17
	" "	orders, $45.33; W. F. Gerard, $2.50	47	83
	" "	P. C. Marvy, $6.50; J. R. Warner, $6	12	50
	" "	J. Dubarry	34	28
	" "	assessment to association	239	05
April 30	" "	" "	230	15
	" "	Portage for April	503	84
	" "	order Capt. Pendleton	5	00
	" "	orders, Capt. Sheldon, $22, $16, $53.33	91	33
	" "	Woodward & Wight, J. Dubarry	161	65
	" "	J. R. Warner, $7; J. Dubarry, $35.41	42	41
	" "	Henry Bitters	33	75
May 31	" "	assessment to association	203	00
	" "	10 days' laid up time, at 40	400	00
		Amount forward	$5,053	92

122

1880.

	To amount forward		$5,052 92
May 31.	" Paid Portage bill for May		135 99
"	" Woodward & Wight		114 77
"	" N. O. Foundry, 2.34; L. Loison, 3.55		5 89
"	" J. R. Warner, 2.40; L'Hote & Co., 2.62		5 05
"	" L. B. Wakeman, 9.85; L. Loison, 31.20		41 02
"	" Orders Capt. Sheldon, 24.67; watchman, 25		49 67
June 30.	" " watchman for June		50 00
"	" ½ coal bill, $2,041.90		1,020 95
"	" ½ of assessment for association		241 38
"	" 30 days' laid up time, @ $40		1,200 00
July 31.	" " 25 " " " " " "		1,000 00
"	" Portage for July		101 83
"	" Jacob Christian		2 60
"	" George Glidden		2 50
"	" F. M. Martin		6 50
"	" Crescent City Ice Co.		3 00
"	" Woodward & Wight		40 85
"	" Watchman for July		50 00
"	" ½ assessment to association		163 11
Aug. 24.	" " " " " " "		1,080 45
31.	" " " " " " "		102 45
"	" Woodward & Wight		85
"	" watchman		50 00
"	" 31 days laid up time		1,240 00
Sep'r 30.	" " ½ of assessment to association		85 99
"	" Rice, Borne & Co., 22.25; O. F. Vallette, 337.84		361 09
"	" H. Flynn, 21.81; Senac & Larose, 1.50		23 31
"	" J. L. Boyd, 16; Woodward & Wight, 106.90		122 90
"	" M. Schwartz & Bro.		2 38
"	" L. & Nashville R. R.		38 00
"	" D. H. Holmes, 18.50; N. O. Foundry, 35.20		53 70
"	" W. C. Shepherd, 6.90; L. B. Wakeman, 18.52		25 42
"	" Wm. Kneely, 16.15; J. W. Brown, 22		38 15
"	" watchman		25 00

1880.			
Sep'r 30.	To paid	30 days laid up time, @ 40	$1,200 00
Octo. 31.	" "	costs of appeal in Louisiana case	28 41
	" "	½ assessment to association	117 82
	" "	orders, 252.41, 100; L. B. Wakeman, 9	361 41
	" "	Kelley & Desomes, 122.50; N. Glasser, 54.58	177 08
			$14,423 44

123

1880.			
Octo. 31.	To	amount forward	$14,423 44
	" paid	H. Carstens .75, C. C. Ice Co. 4 80	5 55
	" "	J. L. Warrel 587 80, J. Bastians 10	597 80
	" "	J. Robinson 249 16, W. C. Shepherd 7 50	256 66
	" "	J. Dubarry 33 98, Orders 49 44	83 42
	" "	N. Glasser	11 43
	" "	30 days laid up time @ 40	1200 00
	" "	½ loss on coal	78 17
Nov. 30.	" "	Proportion of down towages 6767 tons @ 10c. 676 70	338 35
	" "	Proportion of down expenses to Cooper Line	648 66
	" "	J. Dubarry 36 65, portage Novr. 469 33	505 98
	" "	C. House charges 66, Woodward Wight $618 22 205 38	889 60
	" "	Order 11 65, do. Capt. Glary 15	26 65
	" "	Order Sheldon 100, Leeds & Co. 397 99	497 99
	" "	C. C. Ice Co. 4 20, order Sheldon 20	24 20
	" "	M. Schwartz & Bro.	28 82
	" "	Portage bill October	598 35
Dec. 31.	" "	Propn. of expenses to Cooper Line	821 43
	" "	Portage bill for December	416 90

1880.			
Dec. 31.	To paid Westerfield & Butler 6 29, C. C. Ice Co. 3 60		$9 89
	" " Jas. B. Eads 9 95, J. L. Worrill 11 02		20 97
	" " J. Dubarry 39 96, Leeds & Co. 29 70		69 66
	" " Woodward & Wight 222 33, T. Lienthal 12 50		234 83
	" " F. F. Hansill		1 75
	" " Orders to Capt. Sheldon, $240 15		
			255 00
	" " N. O. Towing Co.		20 79
	" Balance carried down to credit tug Mary Lee		2,462 48
			$24,528 77

1879.	CREDITS.		
Decr. 31.	By balance as per ac. rendered	$6,650 12	
1880.			
Jan'y 31.	" Proportion of towages, &c.	1,129 36	
Feb'y 29.	" " " "	1,468 25	
Mch. 31.	" " " "	1,357 43	
Apl. 30.	" " " "	1,357 93	
May 31.	" " " "	1,457 35	
June 30.	" " " "	1,298 99	
July 31.	" " " "	1,679 10	
Aug't 31.	" " " "	1,142 59	
	Amount forward	$17,541 12	$24,528 77

124

1880. Sepr.	Amounts forward	$17,541 12	$24,528 77
Sepr. 30.	By propn. of towage, &c.	1,365 11	
Oct. 30.	" " " "	1,683 96	
Novr. 30.	" " " "	1,583 85	
"	" " of outward towage	90 83	
"	" " of coal sold to Cooper Line	270 75	
Decr. 31.	" propn. of coal sold to Cooper Line	230 00	
"	" propn. of towages	1,763 15	
		$24,528 77	$24,528 77

1880.
Decr. 31. By balance brot. down to credit of Mary Lee $2,462 48

E. & O. E.

NEW ORLEANS, *Decr.* 31*st*, 1880.

125

D.

TUG MARY LEE.

In account with J. W. BLACK.

1879.			
May 31.	To paid 31 days laid up time, at 40		$1,240 00
	" " ⅓ assm't for telegraph to association		47 06
	" " ⅓ assm't for salaries		5 88
	" " ⅓ " " landing tows		6 76
	" " ⅓ " " expenses		88
	" " ⅓ " " rent		2 36
	" " J. Thompson		6 80
	" " Woodward & Wight		1 46
	" " watchman		25 00
June 30.	" " 30 days laid up time, at 40		1,200 00
	" " assessment to association		57 76
	" " Vallette Dry Dock		14 47
	" " Peter Fink		2 40
	" " Woodword & Wight		38 80
	" " watchman		11 10
July 31.	" " assessment to association		57 08
	" " 31 days laid up time, at 40		1,240 00
	" " watchman		16 70
Aug. 31.	" " assessment to association		142 65
	" " 31 days laid up time, at 40		1,240 00
Sept. 30.	" " 30 " " " "		1,200 00
	" " watchman, 2 mos.		33 33
	" " D. Shean's bill		11 50
	" " assessment to association		146 30
Oct. 31.	" " " " "		172 85
	" " 31 days laid up time, at 40		1,240 00
	" " watchman		25 00
Nov. 30.	" " 30 days laid up time, at 40		1,200 00
	" " assessment to association		194 37
	" " W. F. Girod		740 00
	" " A. J. Young		38 80
	" " watchman		31 50
Dec. 31.	" " assessment to association		214 14

1879.			
Dec. 31.	To paid 5 days laid up time, at 40		$200 00
	" " Woodward & Wight		222 80
			$10,294 15
126			
Dec. 31.	To amount forward		$10,294 15
	" " portage for December		553 20
	" " D. Shean	$18.40 97.25	115 65
	" " Mrs. A. Watson		2 75
	" " D. H. Holmes		12 65
	" " washing		1 95
	" " Crescent Ice Co.		3 50
	" " Vallette Dry Dock		37 27
	" " H. Hansen		9 05
	" " W. F. Girard		5 75
	" balance carried down to credit		6,650 12
			$17,686 04

1879.	CREDITS.		
April 31.	By balance as per account rendered	$6,125 61	
May 31.	By proportion of towages as per association statement	1,279 52	
June 30.	By proportion of towages as per association statement	1,311 35	
July 31.	By proportion of towages as per association statement	1,249 04	
Aug. 31.	By proportion of towages as per association statement	1,382 17	
Sept. 30.	By proportion of towages as per association statement	1,398 28	
Oct. 31.	By proportion of towages as per association statement	1,313 18	
Nov. 30.	By proportion of towages as per association statement	2,017 05	
Dec. 31.	By proportion of towages as per association statement	1,609 84	
			$17,686 04
	By balance brought down to credit		$6,650 12

E. & O. E.

NEW ORLEANS, *Dec.* 31*st*, 1879.

127 *Testimony for Defendants. Filed November 18th, 1882.*

Circuit Court of the United States, Fifth Circuit, Eastern District of Louisiana.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et als.* } No. 9282. In Equity.

Testimony taken on the part of the defendants under the 67th rule of practice for the courts of equity of the United States, by F. A. Woolfley, examiner duly appointed by the aforesaid court to take the depositions of the witnesses in the above-entitled cause.

NEW ORLEANS, *January* 7, 1882.

Present: J. R. Beckwith, Esq., solicitor for the defendants; Joseph P. Hornor, Esq., solicitor for complainants.

George A. Falconi, produced and sworn on behalf of the defendant, and examined by Mr. Beckwith, deposes and says:

Question. What is your age? Answer. Fifty-six years.

128 Q. What is your occupation? A. A branch pilot of the port of New Orleans.

Q. How long have you been a branch pilot? A. Thirty-four years this March coming—March or April; I forget what month it was.

Q. Do you know John W. Black? A. Yes, sir.

Q. Do you know the tow-boat Mary Lee? A. Yes, sir.

Q. Did you ever engage in any capacity on the tow-boat Mary Lee? A. I went on board and acted as pilot for Mr. Black.

Q. About when, do you remember? A. I remember I went on board on the evening of the 16th of January last.

Q. How long did you stay on board of her? A. I think I stayed on board of her until I was enjoined, and left her on Tuesday, the 25th January, in the evening.

Q. You are a member of the association of branch pilots? A. Yes, sir.

Q. Who employed you to go on that tow-boat? A. Mr. Black.

Q. Where? A. Here, in the city of New Orleans.

Q. How long before you went on her? A. I left here on the steamship Chrysolite, Sunday morning, and I went down on her and got on board of the Mary Lee on Monday Morning, the 16th January.

129 Q. How long before you went on the Chrysolite was it that Black employed you? A. On Saturday, I went on board the Chrysolite and I slept there that night.

Q. Did you remain on board until you were enjoined? A. Yes, sir.

Q. Have you been on board of her since? A. No, sir.

Q. Have you been in the employ of Mr. Black since? A. No, sir.

Q. Will you tell us how he employed you—on what terms? A. He employed me on no particular terms; he took me as pilot and said he would give me one-eighth of the Mary Lee, but he did not give me one-eighth of the Mary Lee, and that my name was on the papers, but of course I did not know anything about it.

Q. Did he ever offer to you, or give you, any *or give you any* writing making you an owner in the Mary Lee, or any share in her? A. He did not give me any writing whatever.

Q. You never bought any share in the Mary Lee? A. No, sir.

Q. Do you claim any ownership in the Mary Lee? A. No, sir.

130 Q. Tell us as near as you can what he said when he told you he would give you a share in the Mary Lee. A. In the first place, on Friday morning—that was the 14th—I made arrangements to go on board the Mary Lee as pilot. That same day he gave me $100, and the next day he gave me $486. That was the 15th, Saturday; and he told me to make out a receipt to Captain Sheldon that I received from him $100, and I wrote out a receipt for him that I received that money, and he has got my signature for that. The rest of the money he gave me as a present, and I did not sign any document for it.

Q. What I ask you is tell us just what he said to you at the time he said to you he would give you a share in the Mary Lee? A. He told me he would give me an eighth in the Mary Lee, and he would go to the custom-house and have my name put in the papers that same day.

Q. Were you on the Mary Lee on the 29th January, 1881? A. No, sir.

Q. Have you been on her since that time? A. No, sir; not since the 25th. I left her on the 25th, and came up on the

131 Chamberlain.

Q. Who collected the money for the pilotage performed by you? A. Mr. Black. The captains gave me a card from Mr. Black to certify that it was all right. That satisfied me that the pilotage was paid in town.

Q. Who was in command of the Mary Lee while you were on board? A. Glavey or Glaby. Sheldon was not on board of the boat at the time I was on her; he was captain of the Greyhound.

Q. Have you had any desire, or have you had any intention, of going on that boat to pilot since you left her on the 25th of January last? A. No, sir.

Q. Who was on the Mary Lee claiming or pretending to be

acting as pilot the same time you were on her? A. Nobody but myself.

Q. You saw neither Cox or Follett while you were there? A. Cox left the next day when I came on board and went on the Spanish steamer Alava.

Q. Do you know James M. Flynn? A. I know him; yes, sir.

Q. Did you see him during this time that you were negotiating with Black? A. No, sir.

132 Q. Did you see him while you were on the Mary Lee? A. No, sir.

Q. Have you seen him at any time since that time? A. I saw him at a distance when he came from Pensacola on the Mary Lee.

Q. Did you have anything to say to him, or did he have anything to say to you about the pilotage? A. No, sir.

Q. Or about your being on the Mary Lee? A. No, sir; I had no conversation with him, because I had no chance to speak to him.

Q. How long since you had any conversation with James M. Flynn? A. I cannot say, positively; I suppose about two or three years ago, to my knowledge. I cannot say positively. The only time I saw Captain Flynn was about four years ago, when I went up here on the brig Primo. That is the only time I saw him. That is four years ago.

Cross-examined by Mr. HORNER:

Q. When you were employed by Captain Black, as you have stated here, were you a member of the pilot's association? A. Yes, sir.

Q. How many days altogether did you work on the
133 Mary Lee? A. I think I worked from the 16th to the 25th.

Q. How many vessels did you. pilot during that time? A. I cannot say.

Q. Well, about? A. I piloted vessels out, but I don't know *but I don't know* that I piloted any in, except a bark and three in.

Q. You only piloted three vessels while on board the Mary Lee? A. I cannot say for sure, but my books will show.

Q. But I want your memory about it; you say you only remember three vessels in these eight or nine days? A. Well, I think about four or five vessels, but I am not sure; I know I had one steamer, the Ashland, and the Crysolite too. And I think I had a whole tow of three vessels at one time. I think four or five vessels, as near as I can come to it.

Q. When Mr. Black employed you did he not tell you that he was employing you for Captain Sheldon. A. No, sir; he did not state anything about Sheldon.

Q. You say Captain Sheldon took a receipt from you for $100? A. He told me to make it out that way, but he did not say he was employing me for Captain Sheldon. But when I made out the receipt I thought Captain Sheldon was the
134 man that was going to be the captain of the boat.

Q. You say that the $486 was given to you as a present? A. Yes, sir; $486.

Q. You were not to do anything for that $486? A. Well, he said, "I will give you that."

Q. What was the reason for his giving you so fine a present? A. suppose to get me to work for him, because I held a legal commission.

Q. Was it not singular that it was not $500, instead of $486? A. Well, $486, and there was $100 he had me to make out I received from Sheldon.

Q. But you got $486, besides that? A. I got $586 altogether.

Q. Why did he present you with $486; was it not singular on his part? A. It was not singular. I stated that I got $100 on Friday, and the next day $486. That made, with the $100, $486 altogether.

Q. Then you only got $486 altogether? A. No, sir; $586.

Q. I am talking to you about the $486, and then $100. How did he happen to give you as a present the $486? A. He gave me the whole of it as a present, $586. If he had the money on Friday he would have given it to me.

Q. It was a present? A. Yes, sir; I took it so.

135 Q. How did he give you such a singular amount? A. Well, I did not want that he should give me a small amount. I had to sacrifice $1,500 if I would go with him. I told him I would lose my stock if I quitted the association.

Q. Had you to quit the association to go with him? A. I had to quit it by going with him.

Q. Then he gave you the $486 for quitting the association? A. I suppose.

Q. You don't know why he gave you the $486 instead of $500 or $600? A. Well, $386, that was a small debt that I owed, and the other $100, that was my allowance for wages. That $100 he gave me on Friday to make use of.

Q. Who was the small debt due to? A. To several people. I paid the money myself. I had to pay it.

Q. $100 of it was for services? A. Yes, sir.

Q. For how long? A. I don't know.

Q. Was it not for services for a month? A. No, sir; he did not say anything about it at all.

Q. Did you not give him the receipt for services for a month? A. For services rendered?

Q. For one month? A. Well, I suppose it is that.

Q. You suppose it was $100 wages for the month? A.
136 I suppose so.

Q. Your agreement was $100 a month? A. No, sir; I did not make an agreement with him. I thought I would get $150 a month.

Q. That is all the money you received from him? A. $586 was all the money I received from him.

Q. What was the name of the captain of the Mary Lee? A. Glavey.

Q. Was not Captain Sheldon on board, acting as captain during any part of the time you were there? A. No, sir.

Q. During no part of the time you were there? A. No, sir.

Q. Was he ever there? A. He came on board almost every night that we lay alongside the Greyhound.

Q. What would he do when he came on board every night? A. Sit there in conversation, as captains generally do when they make fast.

Q. Did he not take some interest in the Mary Lee when he came on board? A. That I don't know.

Q. Did he not tell you? A. Well, I don't know. I am sorry that I don't know. When people are talking I do not sit close to them. I sit by myself, for I am a subordinate. They might have business transactions between themselves as far as the tug is concerned.

137 Q. During the time you were on board the Mary Lee, did not Sheldon have some talk with you about the business? A. Yes, sir.

Q. Talking about your pilotage and such things? A. No, sir; I don't recollect only what any seafaring man would.

Q. Did not Capt. Sheldon and you have some conversation, when you were on board the Mary Lee, about staying on board and keep on working for them? A. No, sir.

Q. None at all? A. No, sir.

Q. Did not you have a conversation with Captain Sheldon at Port Eads before you made this engagement with Black? A. No, sir.

Q. None at all? A. No, sir.

Q. You never made any agreement with Captain Sheldon that you would go with him? A. No, sir.

Q. You had no conversation with him about it? A. No, sir.

Q. I mean at Port Eads, before you came to the city? No, sir.

Q. None at all? No, sir.

Q. Do you know a man named Charlie Richards? A. Yes, sir.

Q. He is a son-in law of Sheldon? A. No, sir; my son-in-law.

Q. Did you have any conversation with him about going on the Mary Lee before you came on her? A. No, sir; I told him I was going up town to see if he did want me to go with him.

Q. What was Charlie Richards down there? A. He was bookkeeper down there.

Q. Did he represent Captain Sheldon down there? A. Not that I know of.

Q. Did you not have a conversation with him before you came up to see Captain Black? A. No, sir.

Q. What made you first make an agreement with Mr. Black to go on the Mary Lee? A. Well, I suppose, a notion I had.

Q. Just a notion that you took yourself, or somebody else put it into your head? A. When Mr. Black made me the offer to go on his boat I took it.

Q. Did you not know that Mr. Black was going to make you that offer before you came up to town? A. No, sir; I was not sure of it.

Q. You thought he might? A. Yes, sir.

Q. You came up for the express purpose of seeing him? A. No, sir; not until the next day.

Q. Did you make the first proposition to him, or him to you? A. I don't remember the circumstances; we got into a conversation; I forget the conversation; I cannot say; I like to be as near right as I can; I forget what the conversation was, but I told him I would go on the boat.

Q. You say that Mr. Black promised to give you an eighth interest in the boat? A. Yes, sir.

Q. How much is the Mary Lee worth? A. I don't know.

Q. Well, about? A. I don't know; I cannot form an idea.

Q. Do you not know she is worth $25,000? A. I don't know; the boat might be rotten for all I know. If she was a bran new boat I suppose she is worth $30,000 or $35,000.

Q. Do you pretend that Mr. Black was going to give you an eighth interest in that boat for nothing? A. Well, I knew he could not give me an eighth if he could not put my name in the papers. I thought so.

Q. What made you think so? A. On account of this controversy with this association and Mr. Black.

Q. And that is the reason you thought Mr. Black could not put your name in the papers? A. He deceived me; I thought my name was in the papers, and it was not.

Q. You say Mr. Black deceived you because he did not put your name in the papers? A. Yes, sir.

Q. What was he giving you the share for? A. He had an object; to break up the pilot's association?

Q. So you had to be an owner of the boat to comply with the

law on that subject? A. We were not working according to law; she was not a pilot boat.

Q. Was not that the reason he was making you an owner? A. Yes, sir; to make her a pilot boat to come under the law.

Q. And you agreed to that? A. I did not agree for that purpose.

Q. Do you mean that he threw an eighth away for nothing? A. I don't know.

Q. Did you think you should collect an eighth of the profits as they were made? A. No, sir; I did not calculate he should give me anything in the Mary Lee.

Q. Please look at this paper and state whether that is the receipt you gave to Captain Black, that we have been talking about? A. That is my receipt for one month's service, and that is my signature.

Mr. Hornor offers the annexed receipt in evidence, marked D.

141 Q. You say that you stayed on board of this boat until you were enjoined? A. I had a kind of surmise that I was going to be enjoined; I did not think I would be there so long as I was on the Mary Lee, or I would have joined sooner.

Q. Was not that injunction got out with your knowledge and consent? A. No, sir; I did not know anything about it until it was served on me by Larry O'Donnell at the jetties.

Q. Did you not encourage the pilots' association to get out that injunction? A. No, sir.

Q. You never knew anything about it whatever? A. No, sir; I never had any instructions from any people at all.

Q. Immediately after that injunction was served you quit the boat? A. Yes, sir, I did.

Q. And you went back for the association? A. I went back to work according to my contract, and I signed again my agreement because I got out of that.

Q. They did not make you pay that $5,000? A. No, sir; because I went back.

Q. You have been working for the association ever since? A. Yes, sir.

Q. And are working for it now? A. Yes, sir.

The signature of the witness is waived by the solicitor of parties.

142 January 7, 1882.

(Signed) F. A. WOOLFLEY,
Examiner.

No. 9282.—U. S. Circuit Court.

JAMES M FLINN *vs.* RICHARD FRANCIS *et als.*

Exhibit D 1.

Referred to by George A. Falconi in his deposition and offered in evidence by complainant on the cross-examination of said witness January 7, 1882.

(Signed) F. A. WOOLFLEY,
Examiner.

NEW ORLEANS, LA., *January* 15, 1881.

Rec'd from Geo. Sheldon the sum of one hundred dollars for one month services.

$100 (Signed) GEO. A. FALCONI.

Mr. Beckwith on behalf of the defendant offers in evidence a copy of the record in the case of Pliny Cox against John F. Gersdorf and others, No. 125 of the docket of the 24th judicial district court for the parish of Plaquemine; also an attested copy of the record in the case of Hiram Follett against the Pilots' Association and others, No. 122 of the docket of the 24th
143 judicial circuit for the parish of Plaquemine.

The further taking of testimony herein was, by consent of parties, continued to the first day of February, 1882.

(Signed) F. A. WOOLFLEY,
Examiner.

United States Circuit Court, Fifth Circuit, Eastern District of La.

JAMES M. FLYNN
vs.
RICHARD FRANCIS *et als.* } No. 9282.

Testimony taken on behalf of defendants, pursuant to adjournment, before Francis A. Woolfley, Esq., a special examiner duly appointed by the aforesaid court to take the depositions of witnesses in the above-entitled cause.

New Orleans, Feb'y 1st, 1882. Present: James R. Beckwith, Esq., for defendants; Joseph P. Hornor, Esq., for the complainant.

Mr. Beckwith, for defendants, offers in evidence a certified copy of the proceedings and judgment in the case of the
144 State of Louisiana against Pliny Cox, No. 1367 of the docket of the civil district court for the parish of Orleans.

Also a certified copy of the proceedings and judgment in the

case of the State of Louisiana against Hiram Follett, No. 1366 of the docket of the civil district court for the parish of Orleans.

Also a certified copy of the proceedings and judgment in the case of Pliny Cox against George Osgood, No. 1457 of the docket of the civil district court for the parish of Orleans.

Also a certified copy of the record, proceedings, and judgment had in the case of George Osgood against J. W. Black *et als.*, No. 884 of the docket of the civil district court for the parish of Orleans.

Also a certified —— of the record, proceedings, and judgment had in the case of Richard Francis *et als.* against George A. Falconi, No. 2142 of the docket of the civil district court of the parish of Orleans.

Also a copy of the enrollment and license of the steamer Mary Lee.

And the affidavit of John W. Black in the record, sub-
145 scribed and sworn to on the 16th June, 1881, in presence of the master in this case, J. W. Gurley, Esq.

Also an attested copy of the act passed before Joseph A Quintero, Notary Public, on the 27th of May, 1879, being the articles of the association partnership of the defendants, filed in the record as Exhibit "A," to the affidavit of Richard Francis in this case.

Also the power of attorney, constituting Richard Francis the attorney in fact of the persons subscribing thereto, executed at Pilot Town, on the 20th of May, 1879, also annexed to the affidavit of Richard Francis in this case as an exhibit.

Also the ratification of the act of Richard Francis, filed in this record, as an exhibit to the affidavit of Richard Francis, and acknowledged: the execution of which is sworn to by John W. Westerfield, before Joseph A. Quintero, Notary Public, on the 7th of June, 1879, with the certificate attached thereto.

Note.—Reserving the right of Mr. Hornor for complainant to object before the court to the admissability of such data of evidence, and to move for their suppression, the examination is proceeded with.

(Signed) F. A. W., *Ex-r.*

146 Thomas P. C. Halsey sworn and examined for defendants says:

By Mr. Beckwith:

Q. What is your age and occupation? A. My age is thirty-six years, my occupation is master mariner.

Q. How long have you been a mariner? A. Twenty years.

Q. How long have you commanded a ship? A. I went on my first ship twelve years ago.

Q. Have you been in command since then? A. I have been in command since that time in the Merchant's line four years, and about four years in command in the Cromwell line.

Q. During this time have you commanded ships running into the port of New Orleans? A. Yes, sir.

Q. Have you been in command of ships running into the port of New Orleans since the opening of the South Pass by the jetty system? A. Yes, sir, I was on the first ship that came in South Pass, and I have been coming in ever since.

Q. How often have you passed there, one way or the other? A. Twice every three weeks since the pass was opened. That is, once in and once out.

147 Q. The vessels you commanded were under the American register or coasting license? A. They are under the coasting license.

Q. Propelled by steam and carrying passengers coastwise? A. Yes, sir.

Q. In going through the jetties do you take a bar pilot? A. Yes, sir.

Q. Why do you do it? A. As a necessity.

Q. Your frequent passage through the jetties does not give you the confidence to take a vessel in yourself? A. No, sir.

Q. State why you deem it a necessity to take a branch pilot? A. Because I have noticed where a ship has been steered by a pilot at some particular season in the channel, right in the following season, that particular locality was avoided by reason of the shoal being made in several places from the head of the pass until we are clear at the bar from the head of the jetties.

Q. As a mariner would you deem it prudent for a vessel drawing from twenty to twenty-three feet of water to go through the South Pass without a branch pilot or a pilot familiar by constant practice? A. I would not do it under any circumstances.

Q. Are you or not required to take a branch pilot? A.

148 Well, my mind has been that there has been a great deal of difference of opinion about that matter, and I never gave it any consideration. I don't know.

Cross-examined by Mr. HORNOR:

Q. Give the names of the vessels you commanded since the jetties were built? A. The steamer New Orleans, of the Cromwell line only.

Q. What depth of water has she been drawing since the jetties were opened? A. I think I went out drawing twenty-one feet.

Q. And coming in? A. Well, about nineteen feet.

Q. Were these the maximums? A. Well, I think the last draught would be the maximum.

Q. I mean by maximum whether these were the heaviest draught you drew? A. Yes, sir.

Q. And that decreased down to what would be the minimum probably? A. Well, about seventeen and a half feet out, and about sixteen and a half feet in.

Q. When you come in towards New Orleans from the sea, where does the pilot generally board you? A. The pilot boards us at different distances outside of the sea buoy.

149 Q. How far from the mouth of the jetties? A. Well, from five miles to one mile outside of the sea buoy.

Q. You don't know how far the sea buoy is from the jetties? A. I don't know.

Q. Is it more than a mile? A. No, sir; it is about a mile.

Q. Do you not generally pick up your pilot coming in by the sea buoy? A. Generally we do.

Q. Where does he leave you? A. He leaves us at the station about five miles above the head of the passes, I should say.

Q. He comes all the way up with you? A. Yes, sir.

Q. Invariably? A. Yes, sir; I would not come up without one.

Q. Where do you take him when you go down? A. Five miles above the head of the pass.

Q. He goes with you to sea? A. Yes, sir.

Q. And that is invariably? A. Yes, sir.

Q. You said that you have been in the habit of taking these pilots from necessity? A. Yes, sir.

Q. Have you not orders from you owners to take them? A. No, sir; I never had an order from the owner with reference to any thing of that kind.

Q. Nor from any agent with regard to the bar pilots? A. No, sir; nor agent.

150 Q. Then it would depend upon your own volition whether you took one or not? A. Yes, sir.

Q. What is the customary rate of pilotage for the branch pilots at South pass? A. I don't know.

Q. What does your ship pay? A. That I don't know, because it is an agreement with the ship's agent in New Orleans.

Q. And you don't know what that agreement is? A. No, sir.

Q. Did you ever hear any of these pilots say? A. I may have heard them say and forgotten it.

Q. It is less than the established rate? A. I don't know that it is.

Q. The established rate being really $4.50 a foot, would it be less than that? A. My impression is that it would be less, but I don't know.

Q. Mr. Moulton, the agent, would probably know? A. Yes, sir.

Q. Have you ever seen the chart showing soundings at the jetties at South Pass? A. Yes, sir; I had many of them.

Q. They are issued by the Government periodically? A. Yes, sir, I believe so; or they were until a very short while ago.

Q. Could you have navigated your ship through this pass by the aid of that chart? A. No, sir; I could not.

151 Q. Why not? A. One reason would be that I would have a lack of confidence in myself to do it, as I would not consider the charts to be reliable; and for another reason, the charts that were issued a very short time after they were issued where deep water was marked in the charts, and the places so marked by buoys, became so that they changed deep water for a shoal and a shoal for deep water, and for that reason I never considered the charts to be reliable.

Q. And, although you have made voyages to this port every three weeks since the jetties have been opened, you do not consider yourself competent to take your ship up without a branch pilot? A. No, sir; I would not, under any circumstances, attempt it.

Q. When your branch pilot leaves you, as you have stated, when coming up the river, five miles above the head of the Pass, do you take on a river pilot? A. It depends on the condition of the weather.

Q. Sometimes you do and sometimes you do not? A. Yes, sir.

Q. Sometimes you navigate the vessel by yourself? A. Yes, sir.

Q. How are you enabled to do that? A. Because I keep in the middle of the river all the way up.

152 Q. You can bring your ship from the head of the Pass to the city but you feel yourself incompetent to bring it from the sea to the head of the Pass? A. Yes, sir.

Q. You state that you notice in coming up through the Pass, or going down that where you had sometimes formerly passed, your pilots that took you up did not take you there, but in different places? A. Yes, sir.

Q. How long is it since that has happened to you? A. Well, I think that within a year. In other words, I think that a certain locality below the head of the Pass, that a year ago we had to give a very wide berth, and now the pilots take ships very much nearer to it.

Q. Can you name that locality? A. At a certain point just below the head of the Pass, descending the river.

Q. Just below the first work of the jetty company? A. Yes, sir.

Q. You do not know it by any other name? A. No, sir.

Q. Which side of the river is it on? A. The right bank, descending.

Q. You observed that you said within a year? A. Yes, sir; I observed that within a year, and I made inquiry of the piiot as to what the cause was.

153 Q. How long ago was that? A. I don't know how long ago it was. I think that a year ago in going down the river we had to give that particular locality a much wider berth than we do now.

Q. You refresh your memory by saying that you spoke to the pilot, what is his name? A. Mr. Joseph Redmond.

Q. Mr. Redmond generally pilots your ship? A. Yes, sir; he generally does.

Q. And he generally pilots the other ships of that line, does he not? A. I don't know about that.

Q. You take him by preference? A. Yes, sir.

Q. Why do you do that? A. Because I think he is a very superior pilot, and he has piloted me coming into that Pass longer than any other other party, and I, *I* take him for no special reason aside from that.

Signature waived by consent of parties.

(Signed) F. A. WOOLFLEY,
Examiner.

Testimony closed here.

(Signed) F. A. WOOLFLEY,
Examiner.

UNITED STATES OF AMERICA, *Eastern District of Louisiana.* } *ss:*

154 I, F. A. Woolfley, examiner, duly appointed by the circuit court of the United States, for the Eastern District of Louisiana, to take the testimony of George A. Falconi and Thomas P. C. Halsey, witnesses on the part of the defendants, do hereby certify that, on the days named in the depositions hereto annexed, I was attended by the counsel and witnesses aforesaid; that the said witnesses were duly sworn and examined, and their depositions reduced to writing, and that by consent of said counsel the signatures of the witnesses to their depositions were waived. And that Exhibit D 1 was offered in evidence by complainant, and the following exhibits, namely: Copy of record in the case of Pliny Cox *vs.* John F. Gersdorf et als., No. 125, of the 24th judicial district court for the parish of Plaquemines; copy of record in the case of Hiram Follett *vs.* Pilots Association et als., No. 122 of the 24th judicial district court for the parish of Plaquemines; proceedings and judgment in the case of the State of Louisiana *vs.* Hiram Follett, No. 1366, civil district court for the parish of Orleans; proceedings and judg-

ment in the case of the State of Louisiana *vs.* Pliny Cox,
155 No. 1367, civil district court for the parish of Orleans; proceedings and judgment in the case of Pliny Cox *vs.* George A. Falconi, No. 1457, civil district court for the parish of Orleans; proceedings and judgment in the case of George Osgood *vs.* J. W. Black et als., No. 884, civil district court for the parish of Orleans; proceedings and judgment in the case of Richard Francis *vs.* George A. Falconi, No. 2142, civil district court for the parish of Orleans; copy of the enrollment and license of the steamer Mary Lee; affidavit of John W. Black before J. W. Gurley, master, on the 16th June, 1881; copy of an act passed before J. A. Quintero, notary public, May 27, 1879—articles of the association partnership of the defendants; power of attorney, executed at Pilot Town, May 20, 1879, constituting Richard Francis, attorney-in-fact; ratification of the act of Richard Francis with affidavit of John W. Westerfield, as per act passed before J. A. Quintero, notary public, June 7, 1879, were offered in evidence by the defendants during the taking of said depositions.

New Orleans, La., November 18th, 1882.

(Signed) F. A. WOOLFLEY,
Examiner.

156 *Copy of Record No.* 125 *from* 24*th Judicial District Court in and for the Parish of Plaquemines.*

Offered in evidence by the defendants January 7th, 1882.

PLINY COX.
vs.
JOHN F. GERSDORF *et al.*

Petition, &c., filed October 25th, 1880.

To the Honorable the Judge of the Twenty-fourth Judicial District Court in and for the Parish of Plaquemines, La.:

The petition of Pliny Cox, who resides in the parish of Orleans, respectfully shows:

That on the 16th day of February, 1874, your petitioner was appointed and commissioned a duly licensed branch pilot of the port of New Orleans by the Governor of this State, and qualified by giving bond and security as required by law for the faithful performance of the functions incumbent upon him; that under and by virtue of such appointment, commission, and
157 qualification and the laws relative to pilots of the port of New Orleans, petitioner is entitled to perform the duties and receive the emoluments prescribed by law for his services. That the occupation of a branch pilot for the port of New Orleans is lucrative, and is restricted to persons specially designated

by the Governor of the State. That petitioner, as a duly licensed branch pilot of the port of New Orleans, is entitled to board vessels inward bound to the port of New Orleans, and to pilot vessels inward and outward bound over the different mouths of the Mississippi river and to receive the compensation prescribed by law for such services.

That the emoluments arising from services rendered as a branch pilot of the port of New Orleans exceed the sum of fifteen hundred dollars per annum.

Now, your petitioner avers that the members of the pilots' association, organized under and by virtue of sec. 2707, Revised Statutes of 1870, represented by John F. Gersdorf, president of the pilots' association, and John F. Gersdorf individually,
158 and Charles W. Read, branch pilot and captain in charge at Port Eads, in this parish, and Robert M. Wilson, Joseph Redmond, and Asa Douglass, individually and as members of the board of examiners, conspiring, colluding, and continuing together with intent to injure petitioner, and with the illegal design and intent to prevent petitioner from exercising the functions and performing the duties incumbent upon him as a duly licensed branch pilot of the port of New Orleans and from receiving the emoluments arising therefrom, threaten to hinder and obstruct petitioner in the discharge of his said duties, and vex, harass, and annoy petitioner by force and violence and other illegal means, from fulfilling the functions of said office to which he has been appointed as aforesaid.

That petitioner verily fears and believes that said parties, individually and collectively, may execute their said threats by representing that petitioner is not a duly licensed branch pilot of the port of New Orleans by deterring officers and agents
159 of vessels inward and outward bound from employing petitioner to pilot said vessels over the bar at the different mouths of the Mississippi river by maliciously libelling petitioner and pretending that he is incompetent and untrustworthy, and by preventing petitioner with force and violence from boarding and piloting vessels into and out of the port of New Orleans, and from receiving the pay and emoluments therefor.

That the acts and doings of said parties above named, are and will continue to be, injurious to petitioner, cause him great damage, and impair his lawful rights to perform the duties incumbent upon him as a duly licensed branch pilot of the port of New Orleans. That, notwithstanding amicable demand, said parties refuse to refrain from doing their aforesaid illegal acts.

That a writ of injunction is requisite and necessary to prevent the aforesaid parties from doing the acts threatened by them, which may be injurious to petitioner, and seriously impair his

rights as a duly licensed branch pilot of the port of New Orleans.

160 Whereupon petitioner prays that a writ of injunction do issue herein, directed to the members of the pilot's asociation, through John F. Gersdorf, president thereof, and to John F. Gersdorf, individually, to Charles W. Read, individually, and as branch pilot and captain in charge at Port Eads, in this parish, to Robert M. Wilson, Joseph Redmond, and Asa Douglass, individually, and as members of the board of examiners, enjoining, forbidding, and prohibiting them, and each of them, from interfering with, vexing, or harassing petitioner in the discharge of his duties as a duly licensed branch pilot of the port of New Orleans, and from disturbing, hindering, or preventing petitioner, either by force or violence, or in any other manner whatsoever, from boarding and piloting vessels inward and outward bound over the bar at the different mouths of the Mississippi river, and receiving the pay, compensation, and emoluments for said services as a duly licensed branch pilot of the port of New Or-

161 leans. That the aforesaid parties individually and in their several capacities aforesaid, be severally cited to appear and answer this petition, and after due proceedings said injunction be maintained and perpetuated, and petitioner recognized as a duly licensed branch pilot of the port of New Orleans, and as such entitled to perform the duties and receive the emoluments of said position with costs and for all general and equitable relief.

(Signed) E. HOWARD McCALEB,
BRICE & PARDEE,
Att'ys for Pet'r.

Pliny Cox, being duly sworn, deposes and says that all the allegations and statements in the foregoing petition contained are true.

(Signed) PLINY COX.

Sworn to and subscribed before me, this 22nd day of October, A. D. 1880.

[L. S.] (Signed) EDWARD, JR.
Not. Pub.

Order.

Let a writ of injunction issue herein as within prayed for and according to law, on petitioner giving bond, with good and solvent security, in the sum of five hundred dollars, conditioned, as the law directs.

162 Parish of Plaquemines, October 25th, 1880.

(Signed) A. E. LIVAUDAIS,
Judge 24th Jud'l Dist. La.

Bond for Injunction. Filed October 25th, 1880.

Know all men by these presents that we, Pliny Cox, as principal, and Wm. B. Booth, as security, of the Parish of Plaquemines and State of Louisiana, are held and firmly bound with Jno. F. Gersdord, individually, Pilot's Association, C. W. Read, R. M. Wilson, Joseph Redmond, and Asa Douglas, individually, and as members bd. of examiners, their, and each of their, executors, administrators, heirs, and assigns in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Jno. F. Gersdorf, individually, members Pilot's Association, C. W. Read, R. M. Wilson, Joseph Redmond, and Asa Douglas, individually and as members bd. examiners, their, and each of their heirs, executors, administrators, and assigns,
163 for which payment well and truly to be made to the said Jno. F. Gersdorf, members Pilot's Ass'n, J. F. Gersdorf, presd't; C. W. Read, R. M. Wilson, Joseph Redmond, and Asa Douglas, bd. of examiners, their, and each of their executors, administrators, heirs, and assigns, we bind ourselves in *solido*, and each of us by himself, and each of our executors, administrators, heirs, and assigns, firmly by these presents.

Sealed with our seals and dated the 23rd day of Oct'r, 1880.

Whereas, the said Pliny Cox has this day presented a petition to the honorable the 24th judicial district court for the parish of Plaquemines pray for a writ of injunction to issue in the suit of Pliny Cox *vs.* J. F. Gersdorf *et als.*

Now the condition of the above obligation is such that we, the above-bound Pliny Cox as principal, and Wm. B. Booth surety, will well and truly pay to said Jno. F. Gersdorf, Pilot's Association and members thereof, C. W. Reed, R. M. Wilson, Jos. Redmond, and Asa Douglas, bd. examiners, the defendants in said injunction, all such damages as they, or either of them, may recover against us in case it should be decided that the said
164 injunction was wrongfully obtained.

(Signed) PLINY COX.
WM. B. BOOTH.

Signed, sealed, and delivered in presence of ——.

Citation Served on Pilots' Ass'n and Return.

STATE OF LOUISIANA, *Parish of Plaquemines.*

Twenty-fourth Judicial District Court.

PLINY COX
vs.
JOHN F. GERSDORF *et als.* } No. 125.

To the Pilots' Association, through John F. Gersdorf, president

thereof, and to John F. Gersdorf individually, parish of Plaquemines:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the clerk's office of the 24th judicial district court in and for the Parish of Plaquemines ten days after service hereof, adding one day for every ten miles
165 distance from your residence to the court-house of this parish.

By order of the court:

Witness the Honorable A. E. Livaudais, judge, parish of Plaquemines, October 25th, 1880.

[L. S.] (Signed) D. A. THIBAUT, *Clerk.*

Return. Filed October 28th, 1880.

Rec'd Oct. 25th, 1880, and on the 27th of same month and year served a true copy of the within citation, with an accompanying certified copy of petition, on the pilots' association, through John F. Gersdorf, president thereof, and to John F. Gersdorf individually, by leaving the same in the hands of Captain Alfred Ruiz, a person apparently over 14 years of age, a pilot working on the the pilot boat "Hays," of which Captain John F. Gersdorf is captain, the said John F. Gersdorf being absent and at sea at the time of service, which facts I ascertained by interrogating the said Alfred Ruiz.

Returned Oct. 28th, 1880.

(Signed) CHAS. P. STONE, *D'y She'ff.*

166 *Citation Served on Robt. M. Wilson and Return.*

STATE OF LOUISIANA, *Parish of Plaquemines.*

Twenty-fourth Judicial District Court.

PLINY COX
vs.
JOHN F. GERSDORF *et al.* } No. 125.

To Mr. Robert M. Wilson, individually, and as Member of Board of Examiners, Parish of Plaquemines.

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the clerk's office of the 24th judicial district court in and for the parish of Plaquemines ten days after service hereof, adding one day for every ten miles distance from your residence to the court-house of this parish.

By order of the court.

Witness the Honorable A. E. Livaudais, judge, parish of Plaquemines, October 25th, 1880.

[L. S.] (Signed) D. A. THIBAUT, *Clerk.*

167 *Return. Filed October* 28th, 1880.

Rec'd Oct. 25th, 1880, and on the 27th of same and year served a true copy of the within citation, with an accompanying certified copy of petition, on Mr. Robert M. Wilson, individually, and as member of board of examiners personally, at his domicile in this parish.

Returned Oct. 28th, 1880.

(Signed) CHAS. P. STONE, *D'y Sheriff.*

Citation served on C. W. Reed and Return.

STATE OF LOUISIANA, *Parish of Plaquemines.*

Twenty-fourth Judicial District Court.

PLINY COX
vs.
JOHN F. GERSDORF *et als.* } No. 125.

To Mr. Charles W. Reed, individually, and as branch pilot and captain in charge at Port Eads, parish of Plaquemines:

You are hereby summoned to comply with the demand
168 contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the clerk's office of the 24th judicial district court in and for the parish of Plaquemines ten days after service hereof, adding one day for every ten miles distance from your residence to the court-house of this parish.

By order of the court.

Witness the Honorable A. E. Livaudais, judge, parish of Plaquemines, October 25th, 1880.

[SEAL.] (Signed) D. A. THIBAUT, *Clerk.*

Return. Filed October 28th, 1880.

Rec'd, October 25th, 1880, and on the 27th of same month and year served a true copy of the within citation, with an accompanying certified copy of petition, on Mr. Charles W. Reed, individually, and as branch pilot and captain in charge at Port Eads, personally at his domicile in this parish.

Returned Oct. 28th, 1880.

(Signed) CHAS. P. STONE, *D'y Sh'ff.*

169 *Citation Served on Joseph Redmann and Return.*

State of Louisiana, Parish of Plaquemines, Twenty-fourth Judicial District Court.

PLINY COX
vs.
JOHN F. GERSDORF *et al.* } No. 125.

To Mr. Joseph Redmann, individually, and as member of Board of Examiners, parish of Plaquemines.

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the clerk's office of the 24th judicial district in and for the parish of Plaquemines, ten days after service hereof, adding one day for every ten miles distance from your residence to the court-house of this parish.

By order of the court:

Witness, the Honorable A. E. Livaudais, judge, parish of Plaquemines, October 25th, 1880.

[SEAL.] (Signed) D. A. THIBAUT, *Clerk.*

Return. Filed October 28th, 1880.

Received Oct. 25th, 1880, and on the 27th of same
170 month and year, served a true copy of the within citation with an accompanying certified copy of petition, on Mr. Jas. Redmann, individually, and as member of board of examiners, personally, at his domicile in this parish.

Returned October 28th, 1880.

(Signed) CHAS. P. STONE, *D'y Sheriff.*

Citation Served on Asa Douglas and Return.

State of Louisiana, Parish of Plaquemines, Twenty-fourth Judicial District Circuit.

PLINY COX
vs.
JOHN F. GERSDORF *et als.* } No. 125.

To Mr. Asa Douglas, individually, and as member of the board of examiners, parish of Plaquemines.

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the clerk's office
171 of the 24th judicial district court in and for the parish of Plaquemines, ten days after service hereof, adding one day for every ten miles distance from your residence to the court-house of this parish.

By order of the court:

Witness the Honorable A. E. Livaudais, judge, parish of Plaquemines.

October 25th, 1880.

[L. S.] (Signed) D. A. THIBAUT, *Clerk.*

Return. Filed October 28th, 1880.

Rec'd Oct. 25th, 1880, and on the 27th of same month and year served a true copy of the within citation with an accompanying certified copy of petition on Mr. Asa Douglas, individually, and as member of board of examiners, personally, at his domicile in this parish.

Returned Oct. 28th, 1880.

(Signed) CHAS. P. STONE, *D'y Sh'ff.*

Writ of Injunction served on Pilots' Association and Return.

172 State of Louisiana, Parish of Plaquemines, Twenty-fourth Judicial District Court.

PLINY COX
vs.
JOHN F. GERSDORF *et al.* } No. 125.

The State of Louisiana to the Pilots' Association, through John F. Gersdorf, president thereof, and to John F. Gersdorf, individually, Greeting:

You are hereby enjoined, restrained, prohibited, and forbidden in the name of the State of Louisiana, and of the twenty-fourth judicial district court, in and for the parish of Plaquemines, from interfering with, vexing, or harassing the plaintiff herein, Pliny Cox, in the discharge of his duties as a duly licensed branch pilot of the port of New Orleans, and from disturbing, hindering, or preventing said plaintiff, either by force or violence, or in any other manner whatever, from boarding and piloting vessels inward and outward bound over the bar at the different mouths of the Mississippi river, and receiving the pay, compensation, and emoluments for said services, as a duly licensed
173 branch pilot of the port of New Orleans.

And herein you are not to fail under penalty of the law.

Witness the honorable A. E. Livaudais, judge of the court aforesaid, this 25th day of October, A. D. 1880.

[SEAL.] (Signed) D. A. THIBAUT, *Clerk.*

Return. Filed October 28th, 1880.

Rec'd Oct. 25th, 1880, and on the 27th of the same month and year served a true copy of the within writ of injunction on the

Pilots' Association, through John F. Gersdorf, president thereof, and to John F. Gersdorf individually, by leaving the same in the hands of Captain Alfred Ruiz, a person apparently over 14 years of age, a pilot working on the pilot boat "Hays," of which Captain John F. Gersdorf is captain, the said John F. Gersdorf being absent and at sea at the time of service, which facts I ascertained by interrogating the said Alfred Ruiz.

Returned October 28th, 1880.

(Signed) CHAS. P. STONE, *D'y Sh'ff.*

174 *Writ of Injunction served on R. M. Wilson, Jos. Redmann, and Asa Douglas, and Return.*

STATE OF LOUISIANA, *Parish of Plaquemines:*

Twenty-fourth Judicial District Court.

PLINY COX
vs.
JOHN F. GERSDORF *et al.* } No. 125.

The State of Louisiana to Robert M. Wilson, Joseph Redmann, and Asa Douglas, individually, and as member of board of examiners, Greeting:

You are hereby enjoined, restrained, prohibited, and forbidden in the name of the State of Louisiana, and of the twenty-fourth judicial district court, in and for the parish of Plaquemines, from interfering with, vexing, or harassing the plaintiff herein, Pliny Cox, in the discharge of his duties as a duly licensed branch pilot of the port of New Orleans, from disturbing, hindering, or preventing said plaintiff, either by force or violence, or in
175 any manner whatever, from boarding and piloting vessels inward and outward bound over the bar at the different mouths of the Mississippi river, and receiving the pay, compensation, emoluments for said services as a duly licensed branch pilot of the port of New Orleans.

And herein you are not to fail under penalty of the law.

Witness the Hon. A. E. Livaudais, judge of the court aforesaid, this 25th day of October, 1880.

[L. S.] (Signed) D. A. THIBAUT, *Clerk.*

Return. Filed October 28th, 1880.

Rec'd October 25th, 1880, and on the 27 of same month and year served true copy of the within writ of injunction on Messrs. Robert M. Wilson, Jos. Redmann, and Asa Douglas, individually, and as members of board of examiners, personally, at their domicile in this parish.

Returned Oct. 28th, 1880.

(Signed) CHAS. P. STONE, *D'y Sh'ff.*

176 *Writ of Injunction Served on C. W. Reed and Return.*

STATE OF LOUISIANA, *Parish of Plaquemines.*

Twenty-fourth Judicial District Court.

PLINY COX
vs.
JOHN F. GERSDORF *et al.* } No. 125.

The State of Louisiana to Charles W. Reed, individually, and as branch pilot and captain in charge of Port Eads, Greeting:

You are hereby enjoined, restrained, prohibited, and forbidden, in the name of the State of Louisiana, and of the twenty-fourth judicial district court in and for the parish of Plaquemines, from interfering with, vexing, or harassing the plaintiff herein, Pliny Cox, in the discharge of his duties as a duly-licensed branch pilot of the port of New Orleans, and from disturbing, hindering, or preventing said plaintiff, either by force or violence or in any manner whatever, from boarding and piloting vessels inward and outward bound over the bar at the different
177 mouths of the Mississippi river, and receiving the pay, compensation, and emoluments for said services as a duly-licensed branch pilot of the port of New Orleans.

And herein you are not to fail under penalty of the law.

Witness the Hon. A. E. Livaudais, judge of the court aforesaid, this 25th day of October, 1880.

[L. S.] (Signed) D. A. THIBAUT, *Clerk.*

Return. Filed October 28th, 1880.

Rec'd Oct. 25th, 1880, and on the 27th of same month and year served a true copy of the within writ of injunction on Charles W. Reed, individually, and as branch pilot and captain in charge of Port Eads, personally, at his domicile in this parish.

Returned Oct. 28th, 1880.

(Signed) CHAS. P. STONE, *D'y Sh'ff.*

Answer. Filed November 15th, 1880.

Twenty-fourth Judicial District Court in and for the
178 Parish of Plaquemines.

PLINY COX
vs.
JOHN F. GERSDORF *et al.* } No. 125.

And now come the defendants cited herein, and for answer to plaintiff's petition and demand herein, deny all and singular the allegations in said plaintiff's petition contained, and deny that the said Pliny Cox, plaintiff, was at the time of the commence-

ment of this action, or at any time since, has been a duly licensed pilot of the port of New Orleans, or had any right to pilot ——— bound to or from the port of New Orleans, or to pilot any vessels outward bound or inward bound to the port of New Orleans, or over or through any of the mouths of the Mississippi river, nor had he any right to receive any emoluments therefor.

Wherefore they pray that there be judgment against the said plaintiff with costs, and that the injunction herein be dissolved and set aside, and will ever pray.

(Signed) J. R. BECKWITH,
Att'ys for Def'd'ts.

179 *Fixing.*

Extracts from the Minutes of Monday, November 15th, 1880.

On calling the docket of civil cases at issue, the same were fixed as follows, to wit:

125—Pliny Cox *vs.* John F. Gersdorf for Friday, November 19th, 1880.

Motion for a Commission. Filed November 19th, 1880.

District Court, Parish of Plaquemines.

PLINY COX
vs. } No. 125.
PILOTS' ASSOCIATION.

On motion of Brice and Pardee and E. Howard McCaleb, of counsel for plaintiff, and on suggesting to the court that the testimony of George L. Norton, Hon. Louis A. Wiltz, and Oscar Arroyo, all residents of the parish of Orleans, is necessary on the trial of this case, and on suggesting that as said parties resided in the parish of Orleans, a commission is necessary to take their testimony.

It is ordered that a commission do issue from this honorable court directed to any judge, justice of the peace, or person authorized to administer oaths, ordering him to take the testimony of George L. Norton, Hon. L. A. Wiltz, and Oscar Arroyo,
180 all residents of the city of New Orleans and parish of Orleans; that a copy of the interrogatories filed herein be attached to said commission, and that said commission be made returnable on the day of , 1880, o'c'k.

Order for Commission.

Extract from the Minutes of Friday, November 19th, 1880.

PLINY COX
vs. } 125.
PILOTS' ASSOCIATION.

On motion of Brice and Pardee and E. Howard McCaleb,

Esq'rs, attorneys for plaintiff, it is ordered that a commission issue directed to any judge, justice of the peace or notary public of the city of New Orleans, to take the testimony of George L. Norton, Louis A. Wiltz, and Oscar Arroyo, witnesses on behalf of plaintiff, and it is further ordered that a delay of twenty days be granted for the execution and return of said commission, and the case was continued until Tuesday, the 22d day of March, 1881.

181 *Affidavit for Continuance. Filed November 19th*, 1880.

State of Louisiana, Parish of Plaquemines.

PLINY COX
vs.
PILOTS' ASSOCIATION. } No. 125.

Being duly sworn, says that plaintiff cannot safely go to trial in this case without the testimony of George L. Norton, Hon. Louis A. Wiltz, and Oscar Arroyo, all residents of the parish of Orleans, and outside of this parish at this time, that a commission has been taken out of this honorable court to take the testimony of said witnesses within.

That plaintiff has used due diligence to obtain said testimony by taking out a commission therefor within ten days after issue joined herein, according to Rule No. 8 of this court.

That the testimony of said witnesses is material and cannot be supplied by that of any other persons within the knowledge of affiant.

That plaintiff expects to prove by Oscar Arroyo that he is the Assistant Secretary of the State, and has the custody of all the governmental records and archives belonging to the
182 State, that therein there is not now nor ever has been any report of any board of examiners of branch pilots for the port of New Orleans to the Governor of the State showing any neglect of duty, drunkenness, carelessness, habitual intemperance, incompetency, or general bad conduct, on the part of plaintiff, Pliny Cox, as a branch pilot, filed and of record in the office of Secretary of State, nor is there filed in that office or of record any report of any inquiry duly or otherwise made into the foundation of any such charges against Pliny Cox, plaintiff, as a branch pilot of the port of New Orleans.

Plaintiff expects to prove by Hon. Louis A. Wiltz, Governor of the State, that the same state of records exists in the office of the Governor, of which he is the incumbent.

Plaintiff expects to prove by George L. Norton, that in the year 1875, on or about the time of the alleged and pretended and illegal revocation of plaintiff's commission as a branch pilot of

the port of New Orleans, he (Norton) was harbor-master
183 of the port of New Orleans, and was well acquainted with Richard Francis, John Gersdorf, Richard Wilson and others, defendants in this case; that he (Norton) assisted them in securing said illegal revocation; that it was composed and brought about by personal and individual solicitation and representation, and without any report of the board of examiners of the port of New Orleans whatever, without any inquiry whatever, and without observing any of the forms of law, and plaintiff hopes to prove by said Norton and charge the same as true that it was result of a conspiracy of the said Francis Wilson and others of the defendants to injure plaintiff.

Wherefore plaintiff prays that his cause may be continued.

(Signed) PLINY COX.

Sworn to and subscribed before me this 19th day of Nov., 1880.

(Signed) D. A. THIBAUT,
Clerk.

Return of commission. Filed December 9th, 1880.

Written on envelope.

PLINY COX
vs.
PILOTS' ASSOCIATION. } No. 125.

184 To the clerk of the twenty-fourth judicial district court for the State of Louisiana in and for the parish of Plaquemines.

POINT A LA HACHE,
Parish of Plaquemines, La.

Opened March 21, 1881, at the request of defendants.

(Signed) D. A. THIBAUT,
Clerk.

The State of Louisiana, Parish of Plaquemines.

PLINY COX
vs.
PILOTS' ASSOCIATION *et als.* } No. 125.

24th Judicial District Court.

The State of Louisiana and said court: To any judge, justice of the peace, or person authorized to administer oaths in the Parish of Orleans, La.

Know ye, that we, reposing confidence in your prudence and fidelity, do, by these presents, give unto you authority diligently to examine George L. Norton, Hon. L. A. Wiltz, and Oscar Arroyo in a certain suit now pending in our court, in which Pliny Cox is plaintiff and the Pilots' Association *et al.* are defendants, on the part of said plaintiff.

185 Therefore we desire you at certain times and places by you to be appointed for that purpose to cause the said witness to come before you; that you then and there examine them upon their oath first taken before you on the Holy Evangelist; that you reduce the said examination to writing, and when you shall have so taken the same you send it closed up under seal to us in our said court at the court-house at Point-a-la-Hache, parish of Plaquemines, on or before the 9th of December, 1880, and have you then and there this writ.

Witness the Honorable A. E. Livaudais, judge of our said court, this twenty-fourth day of November, A. D. 1880.

[L. s.] (Signed) D. A. THIBAUT, *Clerk.*

Interrogatories to be propounded to Gov. Louis A. Wiltz and Oscar ———, Esq., on the part of plaintiff.

1st. Please state your name and present position.

2nd. What examination have you made of the records
186 and archives of your office as to any report, record, commission, or revocation of commission, in relation to plaintiff, Pliny Cox?

3. What do you find and not find in the matter, particularly as to any report of the board of examiners of the port of New Orleans, or any inquiry made by the Governor under section 1587 and 1598 of the revised statutes, in relation to plaintiff? If you find any such report or inquiry, please attach copies to your answer.

4. State anything within your knowledge that may assist plaintiff to maintain his right to act as a branch pilot of the port of New Orleans, the same as if you were specially interrogated in relation thereto.

Interrogatories to be propounded to George L. Norton on behalf of plaintiff.

1. State your name, age, occupation, and residence.

2. State your official capacity in the year 1875, and what acquaintance you had then with Richard Francis, John Gers-
187 dorf, Robert F. Wilson, Joseph Redmond, Thomas Wilson, and other alleged branch pilots of the port of New Orleans.

3. State what was done by them and yourself to procure the revocation of plaintiff Pliny Cox's commission as a branch pilot of the port of New Orleans.

4. State whether any report of the board of examiners was made, or any inquiry instituted by the board or the Governor.

5. State how, and whose instance, and why the alleged pretended revocation of May 29th, 1875, was obtained.

6. State anything else within your knowledge that may assist

plaintiff to assert and obtain his rights in the premises, the same as if specially interrogated in relation thereto.

Cross-interrogatories. Filed November 19th, 1880.

Twenty-fourth Judicial District Court for the Parish of Plaquemines.

PLINY COX
vs.
JOHN F. GERSDORF, ROBERT M. WILSON *et al.* } No. 125.

188 The defendants object to all and singular and each of the questions propounded as direct interrogatories to the witnesses named in the affidavit for commission herein, and to each several questions propounded to George L. Norton the following cross-interrogatories:

1st.

1 x. Have you ever had any conversation with J. W. Black or any other person relative to any testimony which you could or would give in the case? If yea, state when, where, and give the full conversation.

2 x. If you answer the third direct interrogatory, state whether it is not true that *that* the plaintiff obtained a commission as branch pilot or pilot of the port of New Orleans by fraud and without any examination and recommendation. State all you know of the manner in which such commission was obtained?

3 x. If you answer the 4th interrogatory that there was no report made or inquiry instituted by the Governor, state how and by what means you know it?

189 4 x. State by whom you were informed that your evidence was needed in that case, and whether you have any interest, direct or indirect, in this cause or its result.

Cross-interrogatories to be propounded to Gov. Wiltz and Arroyo.

1st. Is it the custom and habit of your office to preserve reports of the character inquired of in interrogatory 2 and 3.

2d. Are the records of the office occupied by you complete from the time of the organization of the State government when it first became a State; is it not so that many of the records have been lost or destroyed?

3. Is it in your opinion proof that no such reports as are referred to in interrogatory 3 ever were in existence, simply because you cannot find the same, and is it not true that many of the records of your office and the State are lost and missing?

4. Is there any evidence in your office that the plaintiff ever

executed or filed any bond in your office as a branch pilot
190 of the port of New Orleans.

(Signed) J. R. BECKWITH,
(Signed) LAWRENCE O'DONNELL,
Att'ys for Defendants.

Depositions of witnesses produced, sworn, and examined by virtue of the annexed commission, in the year of our Lord one thousand eight hundred and eighty, at New Orleans, in the parish of Orleans, State of Louisiana, before Marcel T. Ducros, a notary public in and for the parish of Orleans, State of Louisiana, authorized to administer oaths, as provided in said commission, in a certain cause, now pending in the twenty-fourth judicial district court of the State of Louisiana, in and for the parish of Plaquemines, between Pliny Cox, plaintiff, and Pilots' Association et al., defendants, on the part of plaintiff.

George L. Norton, being produced and sworn, answers as follows to the interrogatories propounded in this cause:

1st. First interrogatory: State name, age, occupation, and residence?

1st. Answer to first interrogatory: George L. Norton;
191 forty-two years of age; steamboat inspector; 63 Bourbon street, New Orleans, Louisiana.

2d. Second interrogatory: State your official position in 1875, and what acquaintance you had then with Richard Francis, John Gersdorf, Robert F. Wilson, Joseph Redmond, Thomas Wilson, and other alleged branch pilots of the port of New Orleans?

2d. Answer to second interrogatory: Harbor master at New Orleans; I know them all to be branch pilots of New Orleans.

3d. Third interrogatory: State what was done by them and yourself to procure the revocation of plaintiff Pliny Cox's commission as branch pilot of the port of New Orleans?

3d. Answer to third interrogatory: As far as I can remember I applied to Governor Kellogg for the revocation of license to Pliny Cox, Cubitt, and Follett, on account of irregularities of theirs, of which irregularities I do not now remember the nature and details.

4th. Fourth interrogatory: State whether any report of the board of examiners was made, or any inquiry instituted by the board of the governor.

4th. Answer to the fourth interrogatory: No written re-
192 port or inquiry instituted before the license were revoked, if any afterwards, I don't know.

5th. Fifth interrogatory: State how and at whose instance and why the alleged pretended revocation of May 29th, 1875, was obtained?

5th. Answer to fifth interrogatory: By the representations of some of the bar pilots.

6th. Sixth interrogatory: State anything else within your knowledge that may assist plaintiff to assert and maintain his rights in the premises, the same as if specially interrogated in relation thereto.

6th. Answer to sixth interrogatory: I know of nothing further.

Cross-Interrogatory.

1 x. First cross-interrogatory: Have you had any conversation with J. W. Black or any other person relative to any testimony which you could or would give in this case; if yea, state when, where, and give the full conversation?

1 x. Answer to first cross-interrogatory: I might and might not; I have conversed with many persons and cannot re-
193 member conversation.

2d x. Second cross-interrogatory: If you answer the third direct interrogatory, state whether it is not true that the plaintiff obtained a commission as branch pilot or pilot of the port of New Orleans by fraud, and without any examination or recommendation. State all you know of the manner in which said commission was obtained.

2d x. Answer to second cross-interrogatory: I believe the commission was obtained through some irregularity, and I did so represent it to Governor Kellogg at the time.

3d x. Third cross-interrogatory: If in answer to the fourth interrogatory, that there was no report made or inquiry instituted by the governor, state how and by what means you know it.

3d. Answer to third cross-interrogatory: I don't remember.

4th x. Fourth cross-interrogatory: State by whom you were informed that your evidence was needed in this case, and whether you have any interest, direct or indirect, in this case or in its result.

194 4th x. Answer to fourth cross-interrogatory: Don A. Pardee is the one who informed me that my evidence was needed in this case. I have no interest, directly or indirectly, in this case or its result.

And further deponent saith not.

(Signed) GEO. L. NORTON.

Sworn to and subscribed before me, New Orleans, December 3d, 1880.

[L. S.] (Signed) M. T. DUCROS, *Not. Pub.*

The Honorable Louis Alfred Wiltz being produced and sworn, answers as follows to the interrogatories propounded in this case:

1st. Answer to first interrogatory: Louis Alfred Wiltz, Governor of the State of Louisiana.

2d. Second interrogatory: What examination have you made of the records and archives of your office as to any report, record, commission, or revocation of commission in relation to plaintiff Pliny Cox?

2d. Answer to second interrogatory: I have no such record in this office; this is no office of record. I have looked over
195 such papers as I have, and find nothing in relation to this matter.

3. Third interrogatory: What do you find and not find in the matter particularly as to any report of the Board of Examiners of the port of New Orleans, or any inquiry made by the Governor, under sections 1587 and 2698 of the Revised Statutes in relation to plaintiff? If you find any such report or inquiry, please attach copies to your answer.

3. Answer to third interrogatory: My answer here is the same as above; no evidence of inquiry found by me.

4. Fourth interrogatory: State anything within your knowledge that may assist the plaintiff to maintain his right to act as a branch pilot of the port of New Orleans, the same as if you were specially interrogated in relation thereto.

4. Answer to fourth interrogatory: I have no statement to make on the subject.

Cross-interrogatory:

1 x. First cross-interrogatory: Is it the custom and habit of your office to preserve reports of the character inquired of interrogatories 2 and 3?

196 1 x. Answer to first cross-interregatory: The records of the office have not always been preserved.

2 x. Second cross-interrogatory: Are the records of the office occupied by you complete from the time of the organization of the State government, when it first became a State? Is it not true that many of the records have been lost and destroyed?

2. Answer to second cross-interrogatory: No, they are not; I don't know whether they were lost, destroyed, or never furnished.

3 x. Third cross-interrogatory: Is it, in your opinion, proof that no such reports as are referred to in interrogatory 3 ever were in existence simply because you cannot find the same, and is it not true that many of the records of your office and the State are lost and missing?

3 x. Answer to third cross-interrogatory: Not having found the papers and reports is no proof that they have never existed. It is true that many of the papers of this office are missing.

4 x. Fourth cross-interrogatory: Is there any evidence
197 in your office that the plaintiff ever executed or filed any bond in your office as branch pilot of the port of New Orleans?

4th x. Answer to fourth cross-interrogatory: Bonds are not filed in this office.

And further deponent saith not.

(Signed) LOUIS A. WILTZ.

Sworn to and subscribed before me, New Orleans, December 3d, 1880.

[L. S.] (Signed) M. T. DUCROS, *Not. Pub.*

Oscar Arroyo, being produced and sworn, answers as follows to the interrogatories propounded to him in this cause:

1st. First interrogatory: Please state your name and present occupation.

1st. Answer to first interrogatory: Oscar Arroyo, assistant secretary of State.

2d. Second interrogatory: What examination have you made of the record and archives of your office as to any report, record, commission, or revocation of commission in relation to plaintiff, Pliny Cox?

2d. Answer to second interrogatory: I have examined
198 book endorsed "Record of Commissions, office of Secretary of State," and find at page 20, headed "Record of Commissions issued to Branch Pilots," 14th line, under the heading of "name," Pliny Cox appears to have been appointed branch pilot for the port of New Orleans; under the head of "Appointment" the words "on the 25th Feb., 1874;" under the heading of "Number of Bond" there is a blank; under the heading of "Bond, when filed," there is a blank;" under the heading of "Commissions, when issued," the words "on the 25th Feb., 1874," and under the heading of "Oath of Office, when filed," the words "18th Feb., 1874," and under the heading of "Number of Oath" the letter and figures H-94, and under the heading of "Remarks" the words "Commission revoked June 1st, 1875." I have also examined the book of "Proclamation Orders and Messages" of Wm. P. Kellogg, as Governor of Louisiana, and find at page 554 the following: To Mr. Pliny Cox, branch pilot, New Orleans, La. Sir: Upon official report made by the board of pilot examiners, under sections 2698 and 2618, Revised Statutes, your commission as branch pilot of the port of New
199 Orleans has been this day revoked.

Given under my hand and the seal of the State of Louisiana, hereunto affixed, this twenty-ninth day of May, A. D. 1875, and of the Independence of the United States of America the 99th.

(Signed) W. P. KELLOGG.

By the Governor:

[SEAL.] N. DURAND,

Asst. S'c'y of State.

3d. Third interrogatory. What do you find and not find in the matter, particularly as to any report of the board of examiners of the port of New Orleans, or any injury made by the Governor, under sections 1587 and 2698 of the Revised Statutes, in relation to plaintiff? If you find any such report or inqury, please attach copies to your answer.

3d. Answer to third interrogatory. The report required to be made, under section 2698, Revised Statutes of the State, does not belong to this office, and consequently I can give no information relative thereto. I know of no inquiry that was made, and find no evidence in this office, they properly belonging to the office of the Governor.

200 4th. Fourth interrogotory. State anything within your knowledge that may assist the plaintiff to maintain his right to act as a branch pilot of the port of New Orleans, the same as if you were especially interrogated in relation thereto.

4th. Answer to fourth interrogatory. I know of nothing whatever that may assist the plaintiff to maintain his right to act as a branch pilot of the port of New Orleans.

Cross-interrogatories:

1st x. First cross-interrogatory. Is it the custom and habit of your office to preserve reports of the character inquired of in interrogatories 2 and 3?

1st x. Answer to the first cross-interrogatory. It is not.

2d x. Second cross-interrogatory. Are the records of the office occupied by you complete from the time of the organization of the State government when it first became a State? Is it not true that many of the records have been lost and destroyed?

2d x. Answer to second cross-interrogatory. The records of the office are very incomplete.

3d x. Third cross-interrogatory. Is it, in your opinion,
201 proof that no such reports as are referred to in interrogatory 3 were ever in existence, simply because you cannot find the same, and is it not true that many of the records of your office and the State are lost and destroyed?

3d x. Answer to third cross-interrogatory. I cannot answer that question, because, the report having to be made to the Governor, such reports are not filed in this office, but are kept by the Governor. It is true that papers are missing in this office and its records incomplete, as I have stated before.

4th x. Fourth cross-interrogatory. Is there any evidence in your office that the plaintiff ever executed or filed any bond in your office as a branch pilot of the port of New Orleans?

4th x. Answer to fourth cross-interogatory. There is no evidence in the office of the Secretary of State that plaintiff ever filed a bond in said office as branch pilot of the port of New Orleans,

as more fully set forth in my answer to direct interrogatory No. 2. And further deponent saith not.

(Signed) OSCAR ARROYO.

Sworn to and subscribed before me, New Orleans, December 3d, 1880.

[L. S.] (Signed) M. T. DUCROS,
Not. Pub.

202 I, Marcel T. Ducros, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, do hereby certify that George L. Norton, Hon. Louis Alfred Wiltz, and Oscar Arroyo, the deponents, were by me severally sworn to declare the truth on the questions put to them in cause entitled Pliny Cox *vs.* Pilots' Association *et als.*, No. 125. That the interrogatories and cross-interrogatories were produced to them and their answers thereto were taken in writing and subscribed by them respectively in my presence on the day and at the time and place in that behalf first aforesaid.

[L. S.] (Signed) M. T. DUCROS,
Not. Pub.

Fees for M. T. Ducros, not. pub., for these three depositions, at $10 each, the sum of thirty dollars ($30).

Stipulation and Confession of Judgment. Offered in Evidence and filed March 22d, 1881.

Twenty-fourth Judicial District Court in and for the Parish of Plaquemines.

203 PLINY COX
vs.
JOHN F. GERSDORF and others.

I hereby consent, stipulate, and agree that there shall be entered in this case a judgment in favor of the defendants and against the demand of the plaintiff in this case, with costs, and that the judgment be signed at once, and become final as a confession of judgment.

(Signed) PLINY COX.

Judgment. Extract from the Minutes of March 22d, 1881.

PLINY COX
vs.
JOHN F. GERSDORF *et al.* } No. 125.

On motion of J. R. Beckwith and Lawrence O'Donnell, Esqrs., of counsel for the defendants, and on their producing to the court

the within stipulation and confession of judgment of plaintiff herein, it is therefore ordered, adjudged, and decreed that there be judgment in favor of said defendants, the Pilots' Association, and against the plaintiff, Pliny Cox, vacating the writ of
204 injunction herein issued, and dismissing this suit at plaintiff's costs.

Judgment rendered March 22d, 1881.

Signed April 2d, 1881.

(Signed) A. E. LIVAUDAIS, *Judge.*

Clerk's Certificate.

I, Damas A. Thibaut, clerk of the twenty-fourth judicial district court of Louisiana, in and for the parish of Plaquemines, do hereby certify that the above and foregoing sixty-five pages contain a true, correct, and exact transcript of all the proceedings had, documents filed, evidence offered, and testimony adduced on the trial of the cause wherein Pliny Cox is plaintiff and Pilots' Association *et als.* are defendants, known and numbered as suit No. 125 on the docket of the court aforesaid.

In faith whereof I hereunto set my hand and affix the seal of the twenty-fourth judicial district court, in and for the parish of Plaquemines, this twenty-fourth day of December, in the year of our Lord one thousand eight hundred and eighty-one,
205 and of the independence of the United States of America the one hundred and sixth.

[SEAL.] (Signed) D. A. THIBAUT, *C'k.*

Copy of record No. 122, from the twenty-fourth judicial district court in and for the parish of Plaquemines. Offered in evidence by defendants, January 7th, 1882.

HIRAM FOLLETT
vs.
PILOTS' ASSOCIATION *et als.*

Petition, &c. Filed September 22d, 1880.

To the honorable the judge of the twenty-fourth judicial district court in and for the parish of Plaquemines:

The petition of Hiram Follett, who resides in New Orleans, respectfully shows:

That on the 13th day of January, 1874, your petitioner was duly appointed a branch pilot in and for the port of New
206 Orleans, and commissioned as such by the Governor of the State of Louisiana, in conformity with the provisions of the law.

That under said appointment and commission your petitioner

qualified and entered upon the discharge of his duty as one of the branch pilots in and for the port of New Orleans.

That the occupation of branch pilot for the port of New Orleans is a lucrative one, and is restricted to certain persons specially designated by the Governor of the State. That the branch pilots of the port of New Orleans have formed themselves into an association under the provisions of sec. 5707 Revised Statutes of 1870, for the furtherance of their interest. That John F. Gersdorf is president of said "Pilots' Association," having its domicile at Southwest Pass, parish of Plaquemines.

That Robt. M. Wilson, Asa Douglass, and Joseph Redman, constitute the board of examiners for the port of New Orleans.

That said "Pilots' Association," and the members thereof, represented by John F. Gersdorf, their president, and the members of said board of examiners above mentioned, have con-
207 spired, collected, and confederated together, with the design and intention to prevent petitioner from exercising his vocation as a duly licensed branch pilot of the port of New Orleans, and to injure, harass, and vex your petitioner in the exercise and discharge of the duties and functions appertaining to the position held by him as a duly licensed and commissioned branch pilot of the port of New Orleans.

That your petitioner has the legal right to board any vessel inward or outward bound, and pilot such ship or vessel to or from the port of New Orleans, and to receive pilotage at the rate fixed by law for every foot drawn by such ship or vessel piloted by him into and out of the port of New Orleans.

That the annual or yearly income heretofore received by your petitioner far exceeds the sum of one thousand dollars for services rendered by him, as a duly licensed and commissioned branch pilot of the port of New Orleans.

That the members of said "Pilots Association," represented by the said Jno. F. Gersdorf, president thereof, and the
208 said Jno. F. Gersdorf, individually, and the said Robt. M. Wilson, Asa Douglass, and Joseph Redman, individually, and as members of the board of examiners of pilots for the port of New Orleans, combining, colluding, and confederating together, with the design and intention of preventing petitioner from exercising his vocation as a duly licensed branch pilot of the port of New Orleans, have heretofore refused to recognize petitioner as a branch pilot, and have hindered, obstructed, and prevented petitioner from exercising the duties and functions appertaining to his vocation as a duly licensed branch pilot of the port of New Orleans, to the great injury, wrong, and detriment of your petitioner, and they, the said parties above-named, will, unless restrained by injunction, continue, harass, vex, annoy petitioner, and prevent him from exercising and discharging the

duties and functions appertaining to his said vocation and occupation of pilot for the port of New Orleans, thereby injuring and damaging petitioner in the exercise of his business.

That by the illegal acts and doings of said parties pre-
209 venting him from piloting vessels heretofore, petitioner has been damaged one thousand dollars.

That the premises considered, the petitioner is entitled to a writ of injunction to prevent the aforesaid parties from doing the acts above mentioned, which are and will contine to be injurious to petitioner, and which impair his rights, injure his business, and which are extremely prejudicial to the duties incumbent upon him as a duly licensed branch pilot of the port of New Orleans.

Wherefore, petitioner prays the annexed affidavit and bond considered a writ of injunction issue herein directed to the Pilots' Association of the port of New Orleans, and to the members thereof, through their president, John F. Gersdorf, and to the said John F. Gersdorf individually, and to Robert M. Wilson, Asa Douglas, and Joseph Redman, individually and as members of board of examiners for the port of New Orleans, forbidding and prohibiting them, and each of them, individually or collectively, from harassing, vexing and annoying petitioner in the discharge of his duties as a duly licensed branch pilot
210 for the port of New Orleans, and from preventing, hindering and obstructing petitioner in any manner whatsoever, in performing the duties and receiving emoluments of a duly licensed branch pilot of the Port of New Orleans.

That the said "Pilot Association," or "Association of Pilots for the Port of New Orleans," and the members thereof, through their president, Jno. F. Gersdorf, the said Jno. F. Gersdorf, individually, Robt. M. Wilson, Asa Douglas, and Joseph Redman, individually, and as members of the board of examiners of pilots for the port of New Orleans, all residing in this parish, be severally cited to appear and answer this petition.

That after due proceedings, the writ of injunction herein issued be perpetuated, petitioner quieted in his title to and exercise of the functions and duties appertaining to his vocation of a duly licensed branch pilot of the port of New Orleans, and defendants condemned *in solido* to pay unto petitioner the sum of one thousand dollars damages, with cost, and for all general and equitable relief.

(Signed) E. HOWARD McCALEB,
211 BRICE and PARDEE,
Att'ys.

Hiram Follet, being duly sworn, deposes and says that all the allegations and statements contained in foregoing petition are true and correct.

(Signed) HIRAM FOLLETT.

Sworn to and subscribed before me this 18th day of September, 1880. (Signed) W. J. CASTELL,
[L. S.] *Not. Pub.*

Order for injunction: Let a writ of injunction issue herein as within prayed for, and according to law on petitioner's executing bond with good and solvent security, conditioned as the law directs, in the sum of five hundred dollars, all as prayed for according to law. (Signed) A. E. LIVAUDAIS,
Judge 24th Jud'l Dist., La.

Bond for Injunction. Filed September 22d, 1880.

Know all men by these presents, that we, Hiram Follett, as principal, and Wm. B. Booth, as surety of the parish of Plaquemines and State of Louisiana, are held and firmly bound
212 unto Pilots' Association, Jno. F. Gersdorf, pres.; Jno. F. Gersdorf, R. M. Wilson, A. Douglas, and Jos. Redman, individually and as members, board of examiners, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said parties or either of them, their, and each of their heirs, executors, administrators and assigns, for which payment, well and truly to be made, we bind ourselves and each of us by himself, each of our heirs, executors and administrators, firmly by these presents. Sealed with our seal and dated the 22d day of September, in the year of our Lord 1880.

Whereas, Hiram Follett has this day presented a petition to the honorable the 24th judicial district court, parish of Plaquemines, praying a writ of injunction to issue against the Pilots' Association, Jno. F. Gersdorf, R. M. Wilson, Asa Douglas and Joseph Redman, individually and as members of board of examiners.

Now, the condition of the above obligation is such that we, the above bound Hiram Follett and William B. Booth, will
213 well and truly pay to the said Pilots' Association, Jno. F. Gersdorf, R. M. Wilson, Asa Douglas, and Jos. Redman, the defendants in said injunction, all such damages as they, or either of them, may recover against us in case it should be decided that the writ of injunction was wrongfully issued.

(Signed) HIRAM FOLLETT, [L. S.]
WM. B. BOOTH, [L. S.]

Citation served on the Pilots' Association and Return.

State of Louisiana, Parish of Plaquemines, Twenty-fourth Judicial District Court.

HIRAM FOLLETT
vs.
PILOTS' ASSOCIATION *et als.* } No. 122.

To the Pilots' Association for the port of New Orleans and to the members thereof, through their President, Jno. F. Gersdorf, and to the said Jno. F. Gersdorf, individually, of the parish of Plaquemines.

You are hereby summoned to comply with the demand
214 contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the clerk's office of the 24th judicial district court in and for the parish of Plaquemines, ten days after service hereof, adding one day for every ten miles distance from your residence to the court-house of this parish.

By order of the court.

Witness the Honorable A. E. Livaudais, judge, parish of Plaquemines.

[L. S.] (Signed) D. A. THIBAUT, *Clerk.*

Return. Filed October 15th, 1880.

Received October 11th, 1880, and on the 12th October, 1880, served a true copy of the within citation with an accompanying certified copy of petition on Jno. F. Gersdorf as president, &c., by leaving the same at his domicile in this parish in the hands of his wife, Susie Gersdorf, a person apparantly over the age of 14 years, living at said domicile, he, the said Jno. F. Gersdorf, being absent at said time, which facts I ascertained by interro-
215 gating the said Susie Gersdorf.

Returned Oct. 15th, 1880.

JNO. C. DE ARMAS,
Deputy Sheriff.

Citation served on Joseph Redman and Return.

State of Louisiana, Parish of Plaquemines, Twenty-fourth Judicial District Court.

HIRAM FOLLETT
vs.
PILOTS' ASSOCIATION *et als.* } No. 122.

To Mr. Joseph Redman, individually, and as member of board of examiners of pilots for the port of New Orleans, of the parish of Plaquemines:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same, in the clerk's office of the 24th judicial district court in and for the parish of Plaquemines, ten days after service hereof, adding one day for every ten
216 miles' distance from your residence to the court-house of this parish.

By order of the court.

Witness the Honorable A. E. Livaudas, judge, parish of Plaquemines, October 8th, 1880.

[L. S.] (Signed) D. A. THIBAUT, *Clerk.*

Return. Filed October 15th, 1880.

Rec'd Oct. 11th, 1880, and on the 12th day of same month and year served a true copy of the within citation, with an accompanying certified copy of petition, on Joseph Redman personally, at his domicile, in this parish.

Returned Oct. 15th, 1880.

(Signed) JNO. C. DE ARMAS, *D'y Sh'ff.*

Citation served on R. M. Wilson and Return.

State of Louisiana, Parish of Plaquemines, Twenty-fourth Judicial District Court.

HIRAM FOLLETT
vs.
PILOTS' ASSOCIATION *et als.* } No. 122.

217 To Mr. Robert M. Wilson, individually, and as member of the board of examiners of pilots for the port of New Orleans, of the parish of Plaquemines:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or to deliver your answer to the same in the clerk's office of the 24th judicial district court in and for the parish of Plaquemines ten day's after service hereof, adding one day for every ten miles distance from your residence to the court-house of this parish.

By order of the court.

Witness the Honorable A. E. Livaudais, judge, parish of Plaquemines.

October 8th, 1880.

(Signed) D. A. THIBAUT, *Clerk.*

Return. Filed October 15th, 1880.

Rec'd Oct. 11th, 1880, and on the 12th day of the same month and year served a true copy of the within citation, with an ac-

companying certified copy of petition, on Robert M. Wil-
218 son, by leaving the same at his domicile in this parish in the hands of his wife, Jane Wilson, a person apparently over the age of 14 years, living at said domicile, the said R. M. Wilson being absent at the time, which facts I ascertained by interrogating the said Jane Wilson.

Returned Oct. 15th, 1880.

(Signed) JNO. C. DE ARMAS, *D'y Sh'ff.*

Citation served on Asa Douglas and Return.

State of Louisiana, Parish of Plaquemines, Twenty-fourth Judicial District Court.

HIRAM FOLLETT
vs.
PILOTS' ASSOCIATION *et als.* } No. 122.

To Mr. Asa Douglas, individually, and as member of board of examiners of pilots for the port of New Orleans, of the parish of Plaquemines:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this
219 citation, or deliver your answer to the same in the clerk's office of the 24th judicial district court in and for the parish of Plaquemines ten days after service hereof, adding one day for every ten miles distance from your residence to the court-house in this parish.

By order of the court.

Witness the Honorable A. E. Livaudais, judge, parish of Plaquemines.

October 8th, 1880.

[L. S.] (Signed) D. A. THIBAUT, *Clerk.*

Return. Filed October 15th, 1880.

Rec'd Oct. 11th, 1880, and on the 12th day of the same month and year served a true copy of the within citation, with an accompanying certified copy of petition, on Asa Douglas, by leaving the same at his domicile in this parish, in the hands of his wife, Mrs. Josephine Douglas, a person apparently over the age of 14 years, living at said domicile, he, said Asa Douglas, being absent at the time, which facts I ascertained by interrogating the said Mrs. Josephine Douglas.

Returned October 15th, 1880.

(Signed) JNO. C. DE ARMAS,
D'y Sh'ff.

220 *Writ of injunction served on the Pilots' Association and Return.*

State of Louisiana, Parish of Plaquemines. Twenty-fourth Judicial District Court.

HIRAM FOLLETT
vs.
PILOTS' ASSOCIATION *et als.* } No. 122.

The State of Louisiana to the Pilots' Association for the port of New Orleans, and to the members thereof, through their president, Jno. F. Gersdorf, and to the said Jno. F. Gersdorf individually, greeting:

You are hereby commanded, enjoined, forbidden, and prohibited, in the name of the State of Louisiana, and of the twenty-fourth judicial district court in and for the parish of Plaquemines, from harassing, vexing, and annoying the plaintiff, Hiram Follett, in the discharge of his duties of a duly licensed branch pilot of the port of New Orleans, and from preventing, hindering, and obstructing said plaintiff in any manner whatsoever in
221 performing the duties and receiving the emoluments of a duly licensed branch pilot of the port of New Orleans.

And herein you are not to fail, under penalty of the law.

Witness the Hon. A. E. Livaudais, judge of the court aforesaid, this 8th day of October, A. D. 1880.

[L. S.] (Signed) D. A. THIBAUT, *Clerk.*

And herein you are not to fail, under penalty of the law.

Witness the Hon. A. E. Livaudais, judge of the court aforesaid, this 8th day of October, A. D. 1880.

[L. S.] (Signed) D. A. THIBAUT, *Clerk.*

Return. Filed October 15th, 1880.

Rec'd Oct. 11th, 1880, and on the 12th day of the same month and year served a true copy of the within writ of injunction on the Pilots' Association, by and through their president, John F. Gersdorf, by leaving the same at his domicile, in this parish, in the hands of his wife, Susie Gersdorf, a person over the age of 14 years, living at said domicile, the said John F. Gersdorf being absent at the time of said service, which facts I ascertained by interrogating the said Mrs. Susie Gersdorf.

Returned October 15th, 1880.

(Signed) JNO. C. DE ARMAS, *D'y Sh'ff.*

222 *Writ of Injunction served on Joseph Redman and Return.*

State of Louisiana, Parish of Plaquemines. Twenty-fourth Judicial District Court.

HIRAM FOLLEIT
vs.
PILOTS' ASSOCIATION *et als.* } No. 122.

The State of Louisiana to Mr. Joseph Redman, individually, and as member of the board of examiners of pilots for the port of New Orleans, Greeting:

You are hereby commanded, enjoined, forbidden, and prohibited, in the name of the State of Louisiana and of the twenty-fourth judicial district court in and for the parish of Plaquemines, from harassing, vexing, and annoying the plaintiff, Hiram Follett, in the discharge of his duties as a duly licensed branch pilot for the port of New Orleans, and from preventing, hindering, and obstructing said plaintiff in any manner whatsoever in performing the duties and receiving the emoluments of a
223 duly licensed branch pilot of the port of New Orleans.

And herein you are not to fail, under penalty of the law.

Witness the Hon. A. E. Livaudais, judge of the court aforesaid, this 8th day of October, A. D. 1880.

[L. S.] (Signed) D. A. THIBAUT, *C'k.*

Return. Filed October 15th, 1880.

Rec'd Oct. 11th, 1880, and on the 12th day of the same month and year served a true copy of the within writ of injunction on Joseph Redman, personally, at his domicile in this parish.

Returned Oct. 15th, 1880.

(Signed) JNO. C. DE ARMAS, *D'y Sh'ff.*

Writ of Injunction Served on R. M. Wilson and Return.

State of Louisiana, Parish of Plaquemines. Twenty-fourth Judicial District Court.

HIRAM FOLLETT
vs.
PILOTS' ASSOCIATION *et als.* } No. 122.

The State of Louisiana to Robt. M. Wilson, individually,
224 and as member of board of examiners of pilots for the port of New Orleans, of the parish of Plaquemines.

You are hereby commanded, enjoined, forbidden, and prohibited, in the name of the State of Louisiana and of the twenty-

fourth judicial district court in and for the parish of Plaquemines, from harassing, vexing, and annoying the plaintiff, Hiram Follett, in the discharge of his duties as a duly licensed branch pilot for the port of New Orleans, and from preventing, hindering, and obstructing said plaintiff in any manner whatsoever in performing the duties and receiving the emoluments of a duly licensed branch pilot of the port of New Orleans.

And herein you are not to fail under penalty of the law.

Witness the Hon. A. E. Livaudais, judge of the court aforesaid, this 8th day of October, A. D. 1880.

[SEAL.] (Signed) D. A. THIBAUT, *C'k.*

Return. Filed October 15th, 1880.

Rec'd Oct. 11th, 1880, and on the 12th day of the same
225 month and year served a true copy of the within writ of injunction on Robt. M. Wilson, by leaving the same at his domicile, in this parish, in the hands of his wife, Jane Wilson, a person apparently over the age of 14 years, living at said domicile, he, said Robt. M. Wilson, being absent at the time, which facts I ascertained by interrogating the said Jane Wilson.

Returned October 15th, 1880.

(Signed) JNO. C. DE ARMAS, *D'y Sh'ff.*

Writ of Injunction served on Asa Douglas and Return.

State of Louisiana, Parish of Plaquemines, Twenty-fourth Judicial District Court.

HIRAM FOLLETT
vs.
PILOTS' ASSOCIATION. } No. 122.

The State of Louisiana to Mr. Asa Douglas, individually, and as member of board of examiners of pilots for the port of New Orleans, Greeting:

You are hereby commanded, enjoined, forbidden, and
226 prohibited, in the name of the State of Louisiana, and of the twenty-fourth judicial district court in and for the parish of Plaquemines, from harassing, vexing, and annoying the plaintiff, Hiram Follett, in the discharge of his duties as a duly licensed branch pilot for the port of New Orleans, and from preventing, hindering, and obstructing said plaintiff in any manner whatsoever in performing the duties and receiving the emoluments of a duly licensed branch pilot of the port of New Orleans.

And herein you are not to fail under penalty of the law.

Witness the Hon. A. E. Livaudais, judge of the court aforesaid, this 8th day of October, A. D. 1880.

[L. S.] (Signed) D. A. THIBAUT, *C'k.*

Return. Filed October 15th, 1880.

Rec'd Oct. 11th, 1880, and on the 12th day of the same month and year served a true copy of the within writ of injunction on Asa Douglas, by leaving the same at his domicile in this parish, in the hands of Mrs. Josephine Douglas, a person appa-
227 rently over the age of 14 years, living at said domicile, he, said Asa Douglas, being absent at the time, which facts I ascertained by interrogating the said Mrs. J. Douglas.

Returned October 15th, 1880.

(Signed) JNO. C. DE ARMAS, *D'y Sh'ff.*

Answer: Filed November 15th, 1881, in the twenty-fourth judicial district court, in and for the parish of Plaquemines.

HIRAM FOLLETT
vs.
JOHN F. GERSDORF, president of pilot association, *et al.* } No. 122.

To the honorable the judge of said court:

And now come the said defendants, and for answer to said plaintiff's petition deny all and singular the allegations contained and set forth in said petition, and specially deny that the said plaintiff is or at any time has been a duly-licensed branch pilot for the port of New Orleans. That he was never examined by any examiners, and recommended to the Governor of this
228 State for appointment as a branch pilot of the port of New Orleans, and that he never qualified as such, or ever made and delivered the bond required by law of all branch pilots of the port of New Orleans, and also deny that said plaintiff ever at any time had, or that he at the time of the institution of this suit, or at this time, has any lawful right to discharge the duties of a branch pilot of the port of New Orleans, or has or holds any lawful commission as such branch pilot.

Wherefore said defendants pray that there be judgment against the demand of said plaintiff, and that the writ and order of injunction herein granted may be set aside and revoked with costs.

(Signed) J. R. BECKWITH,
Att'y for defd'ts.
LAWRENCE O'DONNELL,
Att'y for defd'ts.

Fixing.

Extract from the minutes of Monday, November 15th, 1880.

On calling the dockets of civil cases at issue the same
229 were fixed as follows, to wit:

122. H. Follett *vs.* Pilots' Association *et als.*, for Friday, November 19th, 1880.

Motion for Commission. Filed November 19th, 1880.

District Court, Parish of Plaquemines.

PILOTS' ASSOCIATION
vs.
HIRAM FOLLETT. } No. —.

On motion of Brice and Pardee and E. Howard McCaleb, of counsel for plaintiff, and on suggesting to the court that the testimony of George L. Norton, Hon. Louis A. Wiltz, and Oscar Arroyo, all residents of the Parish of Orleans, is necessary on the trial of this case, and on suggesting that, as said parties reside in the parish of Orleans, a commission is necessary to take said testimony:

It is ordered that a commission do issue from this honorable court directed to any judge, justice of the peace, or person competent to administer oaths, ordering him to take the testimony of George L. Norton, Hon. Louis A. Wiltz, and Oscar Arroyo, all residents of the city of New Orleans, and parish of Or-
230 leans; that a copy of the interrogatories filed herein be attached to said commission, and that said commission be made returnable on the —— day of ——, 1880, at — o'clock.

Order for Commission.

Extract from the minutes of Friday, November 19th, 1880:

HIRAM FOLLETT
vs.
PILOTS' ASSOCIATION *et al.* } 122.

On motion of Brice and Pardee and E. Howard McCaleb, Esq., attorneys for plaintiff—

It is ordered that a commission do issue herein directed to any judge, justice of the peace, or other person competent to administer oaths in the city of New Orleans, parish of Orleans, to take the testimony of George L. Norton, Louis A. Wiltz, and Oscar Arroyo, witnesses on behalf of plaintiff. And it is further ordered that a delay of twenty days be granted for the execution and return of said commission; and the case was continued
231 until the 22d day of March, 1881.

Affidavit for Continuance. Filed November 19th, 1880.

State of Louisiana, Parish of Plaquemines.

HIRAM FOLLETT
vs.
PILOTS' ASSOCIATION. } No. 122.

Hiram Follett, being duly sworn, says, that plaintiff cannot

safely go to trial in this cause without the testimony of George L. Norton, Hon. Louis A. Wiltz, and Oscar Arroyo, all residents of the parish of Orleans, and outside of this parish at this time; that a commission has been taken out of this honorable ——— to take the testimony of said witnesses, returnable within.

That plaintiff has used due diligence to obtain said testimony by taking out a commission therefor, within ten days after said issue joined herein, according to rule 8 of this court.

That the testimony of said witnesses is material, and cannot be supplied by that of any other persons within the knowledge of affiant.

232 That plaintiff expects to prove by Oscar Arroya, that he is assistant secretary of state, and has the custody of all governmental records and archives belonging to the State; that therein is not now, nor ever has been, any report of any board of examiners of branch pilots for the port of New Orleans, to the governor of the State, showing any neglect of duty, drunkenness, carelessness, habitual intemperance, incompetency, or general bad conduct, on the part of plaintiff, Hiram Follett, as a branch pilot, filed or of record in the office of secretary of state, nor is there filed in that office, or of record, any report of any inquiry, duly or otherwise made, into the foundation of any such charges against Hiram Follett, plaintiff, as a branch pilot of the port of New Orleans.

Plaintiff expects to prove by Hon. Louis A. Wiltz, governor of the State, that the same state of record exists in the office of the governor, of which he is the incumbent.

233 Plaintiff expects to prove by George L. Norton, that in the year 1875, on or about the time of the alleged and pretended, and illegal revocation of plaintiff's commission as a branch pilot of the port of New Orleans, he (Norton) was a harbor master of the port of New Orleans, and was well acquainted with Richard Francis, John Gersdorf, Richard Wilson, and others, defendants in this case, that he (Norton) assisted them in securing said illegal revocation; that it was compassed and brought about by personal and individual solicitation and representation, and without any report of the board of examiners of the port of New Orleans whatsoever, without any inquiry whatsoever, and without observing any of the forms of law, and plaintiff hopes to prove, by said Norton, and charges the same as true, that it was the result of a conspiracy of the said Francis, Wilson, and others of the defendants, to injure plaintiff.

Whereupon plaintiff prays that his cause be continued.

(Signed) HIRAM FOLLETT.

Sworn to an subscribed before me, this 19th day of November, 1880.

(Signed) D. A. THIBAUT, *C'k.*

234 *Return of Commission. Filed December 9th*, 1880.

Written on the envelope:

HIRAM FOLLETT
vs.
PILOTS' ASSOCIATION. } No. 122.

To the clerk of the twenty-fourth judicial district court for the State of Louisiana in and for the parish of Plaquemines, Point-a-la-hache, parish of Plaquemines, La.

(Signed) M. T. DUCROS, *Not. Pub.*

Opened March 21st, 1881, at the request of defendants' counsel.

Commission.

The State of Louisiana, Parish of Plaquemines, 24th Judicial District Court.

HIRAM FOLLETT
vs.
PILOTS' ASSOCIATION. } No. 122.

The State of Louisiana and said court: To any judge, justice of the peace, or person authorized to administer oaths in the parish of Orleans, La.:

Know ye that we, reposing confidence in your prudence and fidelity, do by these presents give unto you authority dili-
235 gently to examine George L. Norton, Hon. Louis A. Wiltzy, and Oscar Arroyo in a certain suit now pending in our court, in which Hiram Follett is plaintiff and the Pilots' Association et als. are defendants on the part of said plaintiff.

Therefore we desire you, at certain times and places by you to be appointed for that purpose, to cause the said witnesses to come before you; that you then and there examine them upon their oaths first taken before you upon the Holy Evangelist; that you reduce the said examination to writing, and when you shall have so taken the same, you send it closed up under seal to us in our said court, at the court-house at Point-a-la-hache, parish of Plaquemines, on or before the 9th of December, 1880, and have you then and there this writ.

Witness the Honorable A. E. Livaudais, judge of the said court, this twenty-fourth day of November, A. D. 1880.

[L. S.] (Signed) D. A. THIBAUT, *Clerk.*

Interrogatories. Filed November 19th, 1880.

236 Interrogatories to be propounded to George L. Norton, on behalf of plaintiff:

1. State name, age, occupation, and residence.

2. State your official position in the year 1875, and what acquaintance you had then with Richard Francis, John Gersdorf, Robert Wilson, Joseph Redmond, Thomas Wilson, and other alleged branch pilots of the port of New Orleans.

3d. State what was done by them and yourself to procure the revocation of plaintiff, Hiram Follett's commission as a branch pilot of the port of New Orleans.

4th. State whether any report of the board of examiners was made or any injury instituted by the board or the Governor.

5th. State how and at whose instance and why the alleged pretended revocation of May 29th, 1875, was obtained.

6th. State anything else within your knowledge that may assist plaintiff to assert and obtain his rights in the premises, the same as if specially interrogated in relation thereto.

237 Interrogatories to be propounded to Gov. Louis A. Wiltz and Oscar Arroyo, Esq., on the part of plaintiff:

1. Please state your name and present occupation.

2. What examination have you made of the records and archives of your office as to any report, record, commission, or revocation of commission in relation to plaintiff, Hiram Follett?

3. What do you find and not find in the matter particularly as to any report of the board of examiners of the port of New Orleans, or any inquiry made by the Governor under sections 1587 and 2698 of the Revised Statutes in relation to plaintiff? If you find any such report or inquiry, please attach copies to your answer.

4th. State anything within your knowledge that may assist the plaintiff to maintain his right to act as a branch pilot of the port of New Orleans, the same as if you were specially interrogated in relation thereto.

Cross-interrogatories. Filed November 19th, 1880.

24th Judicial District Court for the Parish of Plaquemines.

HIRAM FOLLETT
vs.
JNO. F. GERSDORF, ROBERT M. WILSON *et al.* } No. 125.

238 The defendant objects to all and singular and each of the questions propounded as such interrogations to the witnesses named in the application for the commission herein, and to each several questions to [be] propounded to G. L. Norton, the following cross-interrogatories:

1st. Have you had any conversation with J. W. Black, or any other person, relating to any testimony which you could or would give in this case? If yea, state when, and give the full conversation.

2d. If you answer the third direct interrogatory, state whether it is not true that this plaintiff obtained a commission as branch pilot or pilot of the port of New Orleans by fraud and without any examination or recommendation. State all you know of the manner in which such commission was obtained.

3d. If you answer the fourth interrogatory, that there was no report made or inquiry instituted by the Governor, state how and by what means you know it.

4th. State by whom you were informed that your evi-
239 dence was wanted in this case, and whether you had any interest, direct or indirect, in this case or the result.

Interrogatories to be propounded to Gov. Wiltz and the Scc'y of State.

1st. Is it the custom and habit of your office to preserve reports of the character inquired of in interrogations?

2d. Are the records of the office occupied by you complete from the time of organizing the State government when it had become a State; is it not true that many of the records have been lost and destroyed?

3d. Is it in your opinion proof that no such reports as referred to in interrogatories and even were in existence simply because you cannot find the same; and is it not true that many of the records of your office and the State are lost and missing?

4th. Is there any evidence in your office that plaintiff ever executed or filed any bond in your office as a branch pilot of the port of New Orleans?

(Signed) J. R. BECKWITH,
LAWRENCE O'DONNELL,
240 *Att'ys for Defendants.*

Depositions of witnesses produced, sworn, and examined by virtue of the annexed commission, on the sixth day of December, in the year of our Lord one thousand eight hundred and eighty, at New Orleans, in the parish of Orleans, State of Louisiana, before me, Marcel T. Ducros, a notary public in and for the parish of Orleans, Louisiana, authorized to administer oaths, as provided in said commission, in a certain cause, now pending in the twenty-fourth judicial district court of the State of Louisiana, in and for the parish of Plaquemines, between Hiram Follett, plaintiff, and Pilots' Association et als., defendants, on the part of said plaintiff.

George L. Norton, being produced and sworn, answers as follows to the interrogatories propounded in this cause:

1st. To the first interrogatory he says: George L. Norton; forty-two years of age; steamboat inspector; residence, 63 Bourbon street, New Orleans, Louisiana.

241 2d. To the second interrogatory he says: Harbor-master at New Orleans. I knew them all to be branch pilots of the port of New Orleans.

3d. To the third interrogatory he says: As far as I can remember I applied to Governor Kellogg for the revocation of license of Pliny Cox, Cubitt, and Hiram Follett on account of some irregularities of theirs; I do not now remember the nature and detail.

4th. To the fourth interrogatory he says: No written report made or inquiry instituted before the licenses were revoked; if any afterwards I don't know.

5th. To the fifth interrogatory he says: By representations of some of the bar pilots.

6th. To the sixth interrogatory he says: I know of nothing further.

Cross-interrogatory:

1st. To the first cross-interrogatory he says: I don't remember; I might and might not. I have conversed with many persons, and cannot remember conversations.

2d. To the second cross-interrogatory he says: I believe the commission was obtained through some irregularity, and
242 I did so represent it to Governor Kellogg at the time.

3d. To the third cross-interrogatory he says: I don't remember.

4th. To the fourth cross-interrogatory he says: Dan A. Pardee is the one who informed me that my evidence was needed in this case; I have no interest directly or indirectly in this case or its result.

And further deponent saith not.

(Signed) GEO. L. NORTON.

Sworn to and subscribed before me, New Orleans, December 6th, 1880.

[SEAL.] (Signed) M. T. DUCROS, *Not. Pub.*

The honorable Louis Alfred Wiltz being produced and sworn, answers as follows to the interrogatories propounded in this case:

1st. To the first interrogatory he says: Louis Alfred Wiltz, Governor of the State of Louisiana.

2d. To the second interrogatory he says: I have no such record in this office; this is no office of record. I have looked over such papers as I have, and find nothing in relation to this matter.

243 3d. To the third interrogatory he says: My answer here is the same as above; no evidence of inquiry found by me.

4th. To the fourth interrogatory he says: I have no statement to make on the subject.

Cross interrogatory:

1st x. To the first cross-interrogatory he says: The records of this office have not always been preserved.

2d x. To the second cross-interrogatory he says: No, they are not; I don't know whether they were lost, destroyed, or never furnished.

3d x. To the third cross-interrogatory he says: Not having found the papers and reports is not proof that they have never existed. It is true that many of the papers of this office are missing.

4th x. To the fourth cross-interrogatory he says: Bonds are not filed in this office.

And further deponent saith not.

(Signed) LOUIS A. WILTZ.

Sworn to and subscribed before me. New Orleans, December 6th, 1880.

[L. S.] (Signed) M. T. DUCROS, *Not. Pub.*

Oscar Arroyo, being produced and sworn, answers as
244 follows to the interrogatories propounded in this cause to him:

1st. To the first interrogatory he says: Oscar Arroyo, Assistant Secretary of State.

2d. To the second interrogatory he says: I have examined book endorsed "Records of Commissions, office of Secretary of State," and find at page 20, headed "Records of Commissions issued to Branch Pilots," 12th line, under the heading of name "Hiram Follet" appear to have been appointed branch pilot for the port of New Orleans; under the heading of "Appointment" the words, "on the 15th of June, 1874;" under the heading of "Number of Bond" there is a blank; under the heading of "Bond, When Filed" there is a blank; under the heading of "Commission, When Issued," the words, "13th of June, 1874; under the heading of "Oath of Office, When Filed," the words, "June 15th, 1874, G ½;" and under the heading of "Remarks" the words, "Commission revoked May 29th, 1875."

I have also examined the book of "Proclamations, Orders,
245 and Messages" of W. P. Kellogg, as Governor of Louisiana, and find page 554 the following:

"STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,
NEW ORLEANS, *May 29th*, 1875.

To Mr. Hiram Follett, branch pilot, New Orleans.

SIR: Upon official report of the board of examiners, that your commission as branch pilot was issued in error and not in compliance with section 2686 and 2702 Revised Statutes, your commission as branch pilot of the port of New Orleans has this day

been revoked. Given under my hand and the seal of the State hereunto affixed this 29th day of May, 1875, and of the independence of the United States, the nineth-ninth.

(Signed) W. P. KELLOGG.
By the Governor, N. DURAND,
[SEAL.] *Asst. Sec'y State.*"

3d. To the third interrogatory he says: The report required to be made under section number 2698 Revised Statutes of the State, does not belong to this office and consequently I can give no information relative thereto. I know of no inquiry that was made and find no evidence in this office, they properly belong
246 to the office of the Governor.

4th. To the fourth interrogatory he says: I know of nothing whatever that may sssist the plaintiff to maintain his right to act as branch pilot of the port of New Orleans.

Cross Interrogatories.

1st x. To the first cross interrogatory he says: It is not.

2d x. To the second cross interrogatory he says: The records of the office are very incomplete.

3d x. To the third cross interrogatory he says: I can not answer that question because the report having to be made to the Governor, such reports are not filed in this office, but are kept by the Governor. It is true that papers are missing in this office, and its records are incomplete, as I have stated before.

4th x. In answer to the fourth cross interrogatory he says: There is no evidence in the office of the Secretary of State that plaintiff ever filed a bond in said office as branch pilot of the port of New Orleans, as more fully set forth in my answer to direct interrogatory No. 2.

And further deponent saith not.

247 (Signed) OSCAR ARROYO.

Sworn to and subscribed before me, New Orleans, December 6th, 1880.

[L. S.] (Signed) M. T. DUCROS,
Not. Pub.

I, Marcel T. Ducros, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, do hereby certify that George L. Norton, the Honorable Louis Alfred Wiltz, and Oscar Arroyo, the deponents, were by me severally sworn to declare the truth on the questions put to them in the cause entitled Hiram Follett *vs.* Pilots' Association *et als.*, No. 122; that the interrogatories were produced to them, and there answers thereto were taken it writ-

ing and subscribed by them respectively in my presence on the day and at the time and place in that behalf first aforesaid.

[L. S.] (Signed) M. T. DUCROS, *Not. Pub.*

Fees of M. T. Ducros, notary public, for these three depositions, at $10 each, the sum of thirty dollars, $30.

248 *Stipulations and Confession of Judgment. Filed October 28th,* 1881.

Twenty-fourth Judicial District Court in and for the Parish of Plaquemines.

HIRAM FOLLETT
vs.
JOHN F. GERSDORF *et al.* } No. 122.

In this case the plaintiff stipulates and agrees that at the time said suit was instituted he was not and is not at this time a licensed branch pilot of the port of New Orleans, and had not and has no right to act in any manner as a branch pilot of the port of New Orleans, or receive the emoluments of a branch pilot of the port of New Orleans, and agrees and stipulates that the court render a final judgment in this case without any further proceedings herein, dissolving the injunction granted in this case and against the plaintiff's demand herein with costs.

(Signed) HIRAM FOLLETT.

249 *Judgment. Extract from the Minutes of March 22d,* 1881.

HIRAM FOLLETT
vs.
PILOTS' ASSOCIATION *et als.* } 122.

On motion of R. Beckwith and Lawrence O'Donnell, Esqs., of counsel for defendants, and on their producing to the court the written stipulation and confession of judgment of plaintiff herein, it is therefore ordered, adjudged, and decreed that there be judgment in favor of said defendants, the pilots' association of the port of New Orleans, and against the plaintiff, Hiram Follett, vacating the writ of injunction herein issued, and dismissing this suit at plaintiff's costs.

Judgment rendered March 22d, 1881.

Judgment signed April 2d, 1881.

(Signed) A. E. LIVAUDAIS,
Judge.

Clerk's Certificate.

I, Damas A. Thibaut, clerk of the twenty-fourth judicial district court in and for the parish of Plaquemines, do hereby

250 certify that the above and foregoing fifty-nine pages contain a correct and exact transcript of all the proceedings had, documents filed, evidence offered, and testimony adduced on the trial of the cause wherein Hiram Follett is plaintiff and Pilots' Association et als., are defendants, known and numbered as suit No. 122 of the docket of said court.

In testimony whereof, I hereunto set my hand and affix the seal of the court aforesaid, this twenty-fourth day of December, in the year of our Lord one thousand eight hundred and eighty-one, and of the independence of the United States of America the one hundred and sixth.

[SEAL.] (Signed) T. A. THIBAUT, *C'k.*

Copy of transcript of record No. 1366, from the civil district court in and for the parish of Orleans. Offered in evidence by defendants, February 1st, 1882.

State of Louisiana, Civil District Court of the parish of Orleans.

251 Civ. Dist. Court, Division "C."

STATE OF LOUISIANA
vs.
HIRAM FOLLETT. } No. 1366.

Petition. Filed November 24th, 1880.

To the Honorable Judges of the Civil District Court for the Parish of Orleans.

The petition of the State of Louisiana, appearing herein by James C. Egan, Attorney-General of the State, respectfully shows and gives the court to understand and be informed that the defendant, Hiram Follett, who is a resident of the parish of Orleans, in this State, before and on the tenth day of November, A. D. 1880, did unlawfully usurp, intrude into, and unlawfully exercise the office, right, and franchise of branch pilot of the port of New Orleans, in this State, and does still so unlawfully usurp, intrude into, and unlawfully hold and exercise the office franchise of such pilot of the port of New Orleans, and unlawfully pilot and attempt to pilot vessels from the Mississippi river to sea

252 from sea, across the bar, and through the mouth of the Mississippi river, within the State, holding himself out and pretending to be a pilot of the port of New Orleans, and a branch pilot. That the said defendant is not, and at the time aforesaid was not, a duly appointed and qualified pilot of the port of New Orleans, nor in any manner qualified or possessed of the right or authority to act as a branch pilot of the port of New Orleans.

That the revenue, income, fees, and emoluments belonging to

the office of a pilot of the port of New Orleans, and branch pilot are provided and established by law, and exceed the sum of two thousand dollars each year of the term of office of such pilot.

Wherefore, the premises considered, petitioner prays that the said defendant, Hiram Follett, may be duly cited to answer this petition within the legal delay, and that after due proceedings had, that this honorable court adjudge, determine, and declare that the defendant, Hiram Follett, to be in no manner en-
253 titled to the office, rights, or franchises of a branch pilot of the port of New Orleans. That he is without authority to act as a pilot of the port of New Orleans, and that he is an unlawful usurper and intruder into such office and franchise, and that he be ejected therefrom and enjoined and forbidden to act as a pilot or branch pilot of the port of New Orleans, and that he be condemned to pay the costs of this action, and for general relief, and will ever pray.

(Signed) J. C. EGAN,
Att'y General.

Citation.

State of Louisiana, Civil District Court for the Parish of Orleans, in the City of New Orleans.

STATE OF LOUISIANA
vs.
HIRAM FOLLETT. } No. 1366.

To Hiram Follett, New Orleans:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the civil district court for the parish of Orleans within ten days after the service hereof.

254 Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges of the said court, this 24th day of November, in the year of our Lord, 1880.

[SEAL] (Signed) H. MIESTER, *Deputy Clerk.*

Return on Citation. Filed November 26th, 1880.

Received November 24th, 1880, and on the 24th day of November, 1880, I served a copy of within citation and accompanying petition on Hiram Follett, defendant herein, by leaving the same at his domicil, No. 56 Piety street, in the hands of his wife, Mrs. Hiram Follett, a person apparently over the age of 14 years, living and residing in said domicile, whose name and other facts

connected with this service I learned by interrogating Mrs. H. Follett, said defendant being absent from his domicile at time of said service.

Returned same day.

(Signed) FRANK L. ROIG, *D'y Sheriff.*

255 *Exception. Filed December 4th*, 1880.

State of Louisiana, Parish of Orleans, Civil District Court.

STATE OF LOUISIANA, ex rel. Att'y Gen'l,
vs.
HIRAM FOLLET. } No. —.

Exception.

And now into court comes the defendant, through the undersigned counsel, and excepts to the jurisdiction of this court, *ratione materiæ*, because, under sec. 2594 revised statutes, suits under the intrusion-into-office act must be brought in the parish where the case arises, and under section 2693 to 2711 revised statutes and the laws of the State in relation to branch pilots of the port of New Orleans, all the functions and duties of branch pilots of the port of New Orleans must be performed wholly without the jurisdiction of this court, and within the jurisdiction of the district court of the parish of Plaquemines.

Wherefore he prays that this exception be maintained and this suit be dismissed with costs, and for general relief.

(Signed) E. H. McCALEB AND
BRICE & PARDEE,
Counsel.

256 *Motion to fix Exception as Entered on the Minutes of Division C. on December 8th*, 1880.

Present: Hon. F. A. Monroe, judge.

THE STATE OF LOUISIANA, ex rel. Att'y Gen'l,
vs.
HIRAN FOLLETT. } No. 1366.

On motion of J. C. Egan, att'y gen'l, it is ordered that the exception herein filed be set for trial on the 10th day of December, 1880, at 11 o'clock, a. m., with preference, and that the defendant be notified hereof.

Notice of Trial.

State of Louisiana, Civil District Court for the parish of Orleans, Division C.

STATE OF LA.
versus } No. 1366.
H. FOLLETT.

To Brice & Pardee and E. H. McCaleb, attorney and counselors-at-law, New Orleans.

SIR: Please to take notice that the exception in this case has been fixed for trial on the 10th day of December, 1880.

New Orleans, December 8th, 1880.

257 (Signed) GEO. H. THÉARD, *Deputy Clerk.*

Return on Notice of Trial. Filed December 13*th*, 1880.

Received December 8th, 1880, and on the 8th day of December, 1880, I served a copy of within notice of trial on Brice and Pardee, and E. H. McCaleb, atty's herein named, through A. G. Brice in person.

Returned same day. Sh'ff fee, 50c.

(Signed) H. FEEHAN, *Dy. Sh'ff.*

Amended Exception. Filed December 10*th*, 1880.

State of Louisiana, Civil District Court.

STATE, ex rel. Att' Gen'l,
vs. } No. 1366.
HIRAM FOLLETT.

And now comes defendant and by, the undersigned counsel, and the leave of the court, files this amended exception.

1st. That this court is without jurisdiction ratione materiæ, as the usurpation or intrusion alleged does not and cannot arise in this parish, and under the law the office or franchise of
258 branch pilot of the port of New Orleans can only be exercised in the parish of Plaquemines.

2d. That the case alleged not arising in the parish of Orleans, the attorney general is without authority to institute this suit or prosecute the same.

3d. That the petition discloses no cause of action.

Wherefore, defendant prays that this suit be dismissed with costs and for general relief.

(Signed) E. HOWARD McCALEB,
BRICE & PARDEE,
Counsel.

Submission. Extract from the Minutes of Division C.

FRIDAY, *December* 10*th*, 1881.

Present: F. A. Monroe, judge.

STATE OF LOUISIANA
vs.
HIRAM FOLLETT. } No. 1366.

The exception herein came on this day for trial.

Present: J. C. Egan and J. R. Beckwith for plaintiff; E. H. McCaleb and Pardee for defendant.

259 When after hearing pleadings and counsel, the court took the matter under advisement.

Judgment.

Civil District Court, Division C.

STATE OF LA.
vs.
HIRAM FOLLETT. } No. 1366.

For the reasons this day orally assigned by the court:

It is ordered and decreed that the exception to jurisdiction herein filed by the defendant be maintained, and accordingly that this suit be dismissed at plaintiff's costs.

Judgment rendered December 14th, 1880, and signed Dec. 16th, 1880.

(Signed) F. A. MONROE, *Judge.*

Motion and Order of Appeal, as entered on the Minutes of Division C, December 16*th*, 1880.

Civil District Court for the Parish of Orleans.

THE STATE OF LOUISIANA, ex rel. J. C. Egan,
Att'y-Gen'l,
vs.
HIRAM FOLLETT. } No. 1366.

260 On motion of J. C. Eagan, attorney-general of the State of Louisiana, and on suggestion to the court that the plaintiff feels aggrieved by the final judgment in this cause, rendered on the fourteenth day of December, 1880, and signed on the 16th day of December, 1880, as appears by the record thereof in this case, and is advised that there is error in said judgment to the prejudice of the plaintiff herein, and that said plaintiff desires to appeal therefrom to the supreme court of this State:

It is ordered that the said plaintiff be, and is hereby, granted and allowed an appeal from said judgment to the supreme court

of the State, holding sessions at New Orleans, upon giving bond with sufficient security in the sum of three hundred dollars, conditioned as the law directs, and this court order that said appeal be and is made returnable in said supreme court, on Saturday, the 25th day of December, A. D. 1880.

Bond of Appeal. Filed December 16th, 1880.

261 Know all men by these presents, that we, the State of Louisiana, a principal, and J. W. Westerfield, of the city of New Orleans, as surety, are held and firmly bound unto James F. Clark, clerk of the civil district court for the parish of Orleans, his successors, executors, administrators and assigns, in the sum of three hundred dollars, for the payment whereof we bind ourselves, our heirs, executors and administrators firmly by these presents, sealed with our seal and dated in the city of New Orleans on this 17th day of December, in the year of our Lord one thousand eight hundred and eighty.

Whereas the above bounden State of Louisiana this day filed a motion of appeal from a final judgment rendered against the State of Louisiana, appellant, in the suit of the State of Louisiana on the relation of J. C. Egan, attorney general, *vs.* Hiram Follett, No. 1366, in the civil district court for the parish of Orleans on the 14th day of December, 1880, and signed on the 16th day of December, 1880.

Now the condition of the above obligation is such that
262 the above bounded State of Louisiana shall prosecute its said appeal, and shall satisfy whatever judgment may be rendered against it, or that the same shall be satisfied by the proceeds of the sale of its estate, real or personal, if it be cast in the appeal; otherwise that the said John W. Westerfield shall be liable in its place.

(Signed) STATE OF LA.,
Pr. J. C. EGAN, *Attorney General.*
(Signed) J. W. WESTERFIELD.

Signed, sealed, and delivered in the presence of—
(Signed) J. R. BECKWITH.

Answer. Filed February 18th, 1881.

Civil District Court for Parish of Orleans.

Ex Rel. J. C. EGAN, Att'y G'l,
vs.
HIRAM FOLLETT. } No. 1366.

And now comes Hiram Follett, defendant herein, in his own proper person, and for answer to the plaintiff's petition herein

saith, that he denieth all and singular the allegations in the said petition set forth except as hereiuafter admitted; and further answering, defendant saith that he claims the office of
263 branch pilot of the port of New Orleans by virtue of the license and commission annexed to this answer and made part hereof, marked A; that the acts of piloting set forth in said petition as acts of intrusion into the office of branch pilot of the port of New Orleans were done and peformed as therein set forth, but under and by authority of the said commission above referred to; that defendant never had nor held any other commission or authority as a branch pilot of the port of New Orleans; that he admits that at the time said commission was issued defendant had not and never has been recommended to the Governor of the State as being duly qualified as a branch pilot of the port of New Orleans by any board of examiners of pilots, and has never been recommended to any Governor; that he was never examined by any board of examiners of pilots as to his fitness for the office of pilot, and never had or held any certificate of fitness as provided in sec. 2708 of the revised statutes of this State, and insists that said certificate and recommendation are not
264 necessary, and prays judgment of the court thereon, and admits that acting under the issuance of said commission the Governor acted without defendant ever having been recommended by any body of examiners of pilots or having any certificate from said board of examiners.

And he further saith, that he was aware of the action of the Governor of the State, in revoking the commission aforesaid, as set forth in the attested copy thereof hereto annexed, marked B, at the time when said action was taken, but has been advised, and insists, that the same did not, and does not, have the effect to revoke said commission, or affect its validity, and prays judgment of the court in the premises, and that there be judgment in favor of the defendant, and against the said plaintiff.

(Signed) HIRAM FOLLETT.

Exhibit A, Annexed to Answer. Filed February 18th, 1881.

United States of America, State of Louisiana. By William Pitt Kellogg, Governor of the State of Louisiana.

265 In the name, and by authority of the State of Louisiana:

Know ye that I have nominated, constituted and appointed, and by these presents, do nominate, constitute, and appoint, Hiram Follett branch pilot in and for the port of New Orleans, Louisiana, and I do authorize and empower him to execute and fulfill the duties of that office, according to law, and to have, and

to hold the said office, with all the powers, privileges and emoluments to the same, from and after the date hereof.

In testimony whereof I have hereunto signed my name, and caused the great seal of the State to be affixed, at the city of New Orleans, this thirteenth day of January, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States of America, the ninety-eighth.

By the Governor:

[SEAL.] (Signed) WM. P. KELLOGG.

(Signed) P. G. DESLONDE,
Secretary of State.

266 *Exhibit B, Annexed to Answer. Filed February 18th*, 1881.

STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,
NEW ORLEANS, *May 29th*, 1875.

To Mr. Hiram Follett, branch pilot, New Orleans,

SIR: Upon the official report of the board of examiners, that your commission as branch pilot was issued in error, and not in compliance with sections 2686 and 2702, Revised Statutes, your commission as branch pilot of the port of New Orleans, has this day been revoked.

Given under my hand and the seal of the State, hereto affixed, this 29th day of May, A. D. 1875, and of the Independence of the United States the ninety-ninth.

(Signed) W. P. KELLOGG.

By the Governor:

(Signed) N. DURAND,
Secretary of State.

Office of the Secretary of State, State of Louisiana.

I, the undersigned secretary of State of the State of
267 Louisiana, do hereby certify the above to be a true copy of the original, duly recorded in book styled "Record of Proclamations and Messages of W. P. Kellogg, as Governor of the State of Louisiana," page 554.

Given under my signature and the seal of the State of Louisiana, at the city of New Orleans, this twenty-ninth day of October, A. D. 1880.

[SEAL.] (Signed) OSCAR ARROYO,
Ass't Secretary of State.

Opinion and Decree of the Supreme Court. Filed February 19th, 1881.

Supreme Court of the State of Louisiana, Clerk's Office, New Orleans, February 14th, 1881.

STATE OF LOUISIANA, ex rel. J. C. Egan, Attorney General,
vs.
HIRAM FOLLETT. } No. 8106.

Appeal from the District Court for the Parish of ———.

Mr. Justice Todd delivered the opinion and decree of
268 the court in the words and figures following, to wit:

The petition charges that the defendant, "before and on the 10th of November, 1880, did unlawfully usurp, intrude into, and unlawfully exercise the office, rights, and franchise of branch pilot of the port of New Orleans, in this State, and still does so unlawfully usurp, intrude into, and unlawfully hold and exercise the office and franchise of such pilot of the port of New Orleans." It is alleged that the enactments of this office exceed the sum of two thousand dollars per annum, and the petitioner concludes with a prayer that the defendant be adjudged to have unlawfully intruded into said office and be ejected therefrom.

The proceeding was instituted before the civil district court of the parish of Orleans and at the domicile of the defendant.

The defendant excepted to the action on the ground that the court was without jurisdiction *ratione materiæ*, because the action must be brought where the case arises, and that under the
269 laws on the subject of functions of the office in question were to be performed exclusively within the jurisdiction of the district court of the parish of Plaquemines, and for the same reason it was urged that the attorney general was without authority to institute the proceeding, his authority extending only to such cases as may arise in the parish of Orleans.

The exception was sustained and the suit dismissed, and from such judgment the State has appealed. We find, from an examination of the laws, Federal and State, bearing on the subject of this controversy, the following leading provisions: The port of New Orleans includes the parish of Orleans and other parishes and all the waters of the Mississippi river and of the rivers which empty into it within the State, with certain declared exceptions.

Not less than fifty pilots are to be appointed for the port of New Orleans, and it is conceded by both parties to this controversy that such pilots are State officers.

270 It is required that pilots must give bond in the sum of two thousand dollars, with two sureties, residents of the

the city of New Orleans, to be appointed by the master and wardens of the port of New Orleans.

All pilot boats are required to exhibit certain kind of lights, and to cruise to the seaward from the mouth of the Mississippi five nautical miles.

It is clear, from these provisions, that the duties to be performed by these officers are on the waters of the river and the sea, and are designed, as their name implies, for the benefit of the port of New Orleans and the commerce of that port.

And these functions extend everywhere within the limits of the district that pertain to the port of New Orleans, although certain specific acts pertaining to these functions may be more or less confined to certain localities in that district.

It seems to us a palpable perversion of the meaning of the law to argue that the acts and functions of the office pertain
271 alone to the parish of Plaquemines, because certain duties imposed can be performed alone within that parish, such, for instance, as piloting vessels across the bar. The duties required of these officers have no connection whatever with the parish of Plaquemines, either as to her territory, or government, or population, no more than with any other parish of the State, but they pertain and belong exclusively to the port of New Orleans and to the district, water, and land that constitute these. Thus, a case to test the right of a clerk, or sheriff, or police juror, or any other officer in the parish of Plaquemines, of course the action would have to be brought before the proper court of that parish, because, in the language of the act, the "case" or alleged usurpation arose there. The act cited means this and nothing more.

The law provides that a branch pilot for the port of New Orleans shall be appointed by the Governor.

That the board of examiners shall meet in the city of New Orleans twice a year to examine applicants for license.

274 That the master and wardens of the port of New Orleans are required to report cases of non-compliance on the part of pilots with certain requirements of the law to the Governor who may, in such contingency, withdraw their licenses.

The pilots are required to give bond with two sureties residing in the city of New Orleans, to be approved by the master and wardens of the port of New Orleans, and a suit on such bond would have to be brought before the courts of New Orleans.

The defendant in this case is a resident of the city of New Orleans, and the general rule of practice is that a party must be sued at his domicile; C. P. 162; and this case we do not find to be within any of the exceptions to that rule.

We conclude, therefore, that this proceeding was properly instituted before the civil district court of the parish of Or-

leans, and that the ruling of the judge *a quo* sustaining the exception and dismissing this suit was erroneous. Nor do
273 we see any force in the suggestion made in the brief of defendant's counsel, that this court on its own motion should dismiss this suit for the want of jurisdiction *ratione materiæ*. It is alleged that the emoluments of the office in question exceeds $2,000 which are enjoyed by the defendant, and that is sufficient to give jurisdiction regardless of the interest of the State.

It is therefore ordered that the judgment appealed from be annulled, avoided, and reversed, and the exception be overruled, and the case remanded to be proceeded with according to law. The costs of the appeal to be paid by the appellees, and the costs of the lower court to await the determination of the suit.

A true copy.

[SEAL.] (Signed) GEORGE W. DUPRÉ, *Clerk.*

Motion to fix Case as entered on the Minutes of Division C, on February 19th, 1881.

276 STATE OF LOUISIANA, *ex rel.* Attorney-Gen'l,
vs.
HIRAM FOLLETT. } No. 1366.

On motion of J. C. Eagan, att'y-gen'l, it is ordered that this cause be fixed for trial on Thursday next, the 24th day of February, 1881, by preference, and that the defendant be notified thereof.

Answer. Filed February 23rd, 1881.

STATE OF LOUISIANA, *ex rel.* Attorney-General,
vs.
HIRAM FOLLETT. } No. 1366.

Now comes said Hiram Follett, and for answer to the petition filed in this case pleads the general issue. Further answering the said petition defendant says that he is a duly appointed, commissioned, and qualified branch pilot for the port of New Orleans, and as such entitled to perform all the functions pertaining to said office.

277 Wherefore he prays for judgment dismissing the petition, and for costs and for general relief.

(Signed) BRICE & PARDEE,
" E. HOWARD McCALEB,
Counsel.

Testimony. Filed February 26th, 1881.

STATE OF LOUISIANA,
vs.
H. FOLLETT,
No. 1366.

Richard Francis sworn for plaintiff.

Q. You are a branch pilot of the port of New Orleans? A. Yes, sir.

Q. How long have you been so? A. I was commissioned in 1849.

Q. Who constituted the board of examiners of pilots on and before the 13th of January, 1874? A. John McGlocklen, H. Therman, Richard Francis.

Q. Do you know Hiram Follett? A. Yes, sir.

Q. Did Hiram Follett ever apply for or was he ever examined as to his fitness for a branch pilot, or had any certificate prior to the issuing of this commission? A. No, sir.

278 Q. Do you remember when he first claimed to act as a pilot? A. I don't remember the date exactly. I remember his coming down in a little sloop, him and five others, and it was reported that he was a branch pilot.

Q. But he had never been examined? A. Never been examined.

Q. How long did he keep that up? A long time.

Q. Did he ever abandon it again? A. Not until his commission was revoked.

Q. Did he stop after the date of the revocation? A. Yes.

Q. When did he begin again? A. He began in the employ of Mr. Black.

Q. How long ago? A. Last October.

Q. What has become of Mr. Therman? A. He is dead.

Q. When did he die? A. I don't remember the date; about four years ago.

Mr. McGlocklen sworn for plaintiff.

Q. You were one of the board of examiners on and prior to the 13th day of January, 1874, were you not? A. Yes, sir.

Q. Do you know Hiram Follett? A. I do.

279 Q. Was Hiram Follett ever examined before the board prior to the issuing of this? A. No, sir.

Q. It was issued without any examination? A. Yes; he was not examined by me. I was commissioner at the time.

Q. And no certificate was signed? A. No.

Q. You remember the time of the revocation by the Governor? A. I don't know the date.

Q. You know the fact? A. Some time in May, 1875.

Q. Has he been recently trying to act as pilot again? A. Yes, sir.

Q. You seen him? A. Yes, sir.

Q. How long ago? A. Two months—October—about the middle of October.

Mr. Westfield sworn for plaintiff.

Q. You know Hiram Follett? A. Yes, sir.

Q. Have you ever had any conversation with him relative to his professing to be a branch pilot? A. Yes, sir; some three or four months ago.

Q. What did he say? A. He said that he had never been examined by any commissioners made by Governor Kellogg. I think without being examined.

Q. Say anything about the revocation? A. Yes; said, I think, it was revoked in 1875.

280 Q. Did he say anything about his own opinion? A. He said he had no claim for it; he said he thought he would fight it though, and worry these people out with the money.

(Plaintiff offers the answer and its exhibits and document marked A.)

Document marked A, offered in evidence by plaintiff. Filed February 24th, 1874.

State of Louisiana, office of the Secretary of State.

I, the undersigned, Secretary of State of the State of Louisiana, do hereby certify that in the entry of "Record of Commissions," issued by the Governor of the State of Louisiana, the following is the only entry therein made relative to any appointment and commission of Hiram Follett as a branch pilot of the port of New Orleans, and that it does not appear in any of the records of this office that the said Hiram Follett ever executed or filed in this office the bond required by law as branch pilot of the port of New Orleans.

281 *Record of Commissions.*

Record of Commissions issued to Branch Pilots.

Name—Hiram Follett.
Post-office— ———.
Parish— ———.
Appointed—1874, Jan. 13.
Number of bond— ———.
Bond, when filed— ———.
Oath of eligibility— ———.
No.—Number ——.

Commissioned—1874, Jan. 13.
Oath of office—1874, Jan. 15.
Number—G 12.
Resigned—Commission revoked May 29, '75.
Term of office expired— ———.

Given under my signature and the seal of the State of Louisiana, at the city of New Orleans, this twenty-seventh day of November, eighteen hundred and eighty.

(Signed) OSCAR ARROYO,
Ass't Secretary of State.

282 *Judgment.*

Civil District Court, Division C.

STATE OF LA.
vs.
HIRAM FOLLETT. } No. 1366.

This case came up for trial to-day.

Present: J. R. Beckwith, for plaintiff; defendant absent and not represented.

When, after hearing pleadings and evidence, the law and evidence being in favor of plaintiff, it is ordered, adjudged, and decreed that the defendant, Hiram Follett, is in no manner entitled to the office, rights, or franchises of a branch pilot of the port of New Orleans. That he is an unlaful usurper and intruder into such office and franchise, and that he be ejected therefrom and enjoined and forbidden to act as a pilot or branch pilot of the port of New Orleans. It is further ordered that defendant pay costs of this action.

Judgment rendered February 24th, 1881, and signed March 2nd, 1881.

(Signed) F. A. MONROE, *Judge.*

283 *Certificate.*

I, James T. Clark, clerk of the civil district court for the parish of Orleans, do hereby certify the foregoing thirty-three pages do contain a true and correct transcript of all the proceedings had, documents filed, testimony and evidence adduced in the cause entitled State of Louisiana ex-rel. att'y gen'l *vs.* Hiram Follett, instituted and prosecuted in this court under the number 1366 of the docket.

In testimony whereof I have hereunto set my hand and affixed the impress of the seal of this court on the thirteenth day of May, in the year of our Lord one thousand eight hundred and eighty-one, and the 105th year of the Independence of the United States.

[SEAL.] (Signed) JAMES T. CLARK, *Clerk.*

Transcript of record No. 1367, from the civil district court,
284 in and for the Parish of Orleans. Offered in evidence by the defendants, February 1st, 1882.

State of Louisiana, Parish of Orleans. Civil district court for the Parish of Orleans.

STATE OF LOUISIANA
vs. } No. 1367.
PLINY COX.

Civil Dist. Court, Div. E.

Petition. Filed Nov. 24th, 1880.

STATE OF LOUISIANA
vs. } No. 1367.
PLINY COX.

To the Honorable Judges of the Civil District Court for the parish of Orleans:

The petition of the State of Louisiana, appearing herein by "James C. Egan, attorney general" of the State.

Respectfully shows and gives the court to understand and be informed that the defendant, "Pliny Cox," who is a resident
285 of the Parish of Orleans in this State, before and on the tenth day of November, A. D. 1880, did unlawfully usurp, intrude into, and unlawfully exercise the office, right and franchise of branch pilot of the port of New Orleans, in this State, and still does so unlawfully usurp, intrude into, and unlawfully hold and exercise the office franchise of such pilot of the port of New Otleans, and unlawfully pilot and attempt to pilot vessels from the Mississippi river to sea, from sea across the bars and through the mouth of the "Mississippi river," within the State, holding himself out and pretending to be a "pilot of the port of New Orleans and a branch pilot."

That the said defendant is not, and at the time aforesaid was not, a duly appointed and qualified pilot of the port of New Orleans, nor in any manner qualified or possessed of the right or authority to act as a branch pilot of the port of New Orleans.

That the revenues, income, fees, and emoluments, belonging to the office of a pilot of the port of New Orleans, and
286 branch pilot, are provided and established by law, and exceed the sum of two thousand dollars each year of the term of office of such pilot.

Wherefore, the premises considered, petitioner prays that the said defendant, Pliny Cox, may be duly cited to answer this petition within the legal delay, and that after due proceedings had, that this hon. court adjudge, determine, and declare, that the defendant, Pliny Cox, to be in no manner entitled to the office,

rights or franchise of a branch pilot of the port of New Orleans; that he is without authority to act as pilot of the port of New Orleans, and that he is an unlawful usurper and intruder into such office and franchise, and that he be ejected therefrom, enjoined and forbidden to act as a pilot, or branch pilot of the port of New Orleans, and that he be condemned to pay the costs of this action, and for general relief, and will ever pray.

(Signed) J. C. EGAN, *Att'y General.*

287 *Citation.*

State of Louisiana. Civil Dist. Court for the Parish of Orleans, in the City of New Orleans.

STATE OF LOUISIANA
vs.
PLINY COX. } No. 1367.

Mr. Pliny Cox, New Orleans:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the civil district court for the parish of Orleans ten days after the service hereof.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges of the said court, this 24th day of November, in the year of our Lord, 1880.

(Signed) H. MIESTER, *D'y Clerk.*

[STAMP AND SEAL.]

Return to Citation. Filed Nov. 29th, 1880.

I served a copy of the within citation and accompanying petition on Pliny Cox, defendant herein, by leaving the same
288 at his domicile, No. 274 Clara street, in the hands of Mrs. Pliny Cox, his wife, a person apparently over the age of 14 years, living and residing in said domicile, whose name and other facts connected with this service I learned by interrogating said Mrs. Pliny Cox, said defendant being absent from the city at time of said service.

(Signed) JNO. E. SEEKFORT, *D'y Sh'ff.*

Exception. Filed Dec. 6th, 1880.

State of Louisiana, Parish of Orleans, Civil District Court.

STATE OF LOUISIANA, ex rel. Att'y Gen'l,
vs.
PLINY COX. } No. —.

Exception.

And now into court comes the defendant, through the under-

signed counsel, and excepts to the jurisdiction of this court, *ratione materiæ*, because, under section 2594, revised statutes, suit under the intrusion into office act must be brought "in the
289 parish where the case arises;" and under sections 2693 to 2711, revised statutes, and the laws of the State, in relation to branch pilots of the port of New Orleans, all the duties and functions of branch pilots of the port of New Orleans must be performed wholly without the jurisdiction of this court and within the jurisdiction of the district court for the parish of Plaquemines.

Wherefore, he prays that this exception be maintained and this suit dismissed, with costs and for general relief.

(Signed) E. H. McCALEB,
and BRICE and PARDEE, *Att'ys.*

Default.

Extract from the Minutes of Wednesday, Dec. 8th, 1880.

Present, the Hon. Henry L. Lazarus, judge.

Civil Dist. Ct., Div. E.

STATE OF LOUISIANA
vs.
PLINY COX. } No. 1367.

On motion of J. C. Egan, attorney-general, for plaintiff, and on showing to the court that defendant though duly cited
290 has failed to answer, it is ordered by the court that judgment by default be entered against him.

Amended Exception. Filed Dec. 10, 1880.

State of Louisiana.

To the Judge of the Civil District Court, Parish of Orleans.

STATE OF LOUISIANA
vs.
PLINY COX. } No. 1367.

And now comes defendant, by undersigned counsel, and the leave of the court, files this amended exception:

1st. That this court is without jurisdiction *ratione materiæ*, as the usurpation or intrusion alleged does not and cannot arise in this parish, and under the law the office or franchise of branch pilot of the port of New Orleans can only be exercised in the parish of Plaquemines.

2nd. That the case alleged not arising in the parish of Orleans, the attorney-general is without authority to institute this suit or prosecute the same.

3rd. That the petition *encloses* no cause of action.

291 Wherefore defendant prays that this suit be dismissed with costs, and for general relief.

(Signed) E. HOWARD McCALEB,
and BRICE and PARDEE.

Default set aside.

Extract from the Minutes of Saturday, Dec. 11, '80.

STATE OF LOUISIANA
vs.
PLINY COX } No. 1367.

On motion of plaintiff herein, and showing to the court that the default herein entered on the 8th inst. was made through error, and that at the time of taking said default there was still pending an exception filed by defendant herein.

It is ordered, that said default be set aside as having been entered through error.

Motion to fix Exception.

Extract from the Minutes of Saturday, Dec. 11, '80.

Present: The Hon. H. L. Lazarus, judge.

STATE OF LOUISIANA
vs.
PLINY COX. } No. 1367.

292 On motion of J. C. Egan, att'y-gen'l, for plaintiff, it is ordered by the court that the exception herein filed by defendant be fixed for trial on the 17th inst., at 11, a. m.

Exception Submitted.

Extract from the Minutes of Friday, Dec. 17th, 1880.

Present: The Hon. Henry L. Lazarus, judge.

STATE OF LOUISIANA
vs.
PLINY COX. } No. 1367.

The exception filed to the jurisdiction of this court came on this day for trial.

Brice and Pardee, att'ys for pl'ff in exception; J. R. Beckwith, att'y for defendant in exception.

When, after hearing pleadings and argument of counsel, said exception was submitted to the court, who took the same under advisement.

Answer. Filed Feb'y 5th, 1881.

Civil District Court for the Parish of Orleans.

STATE OF LOUISIANA, ex rel. J. C. Egan, Attoney-General, *vs.* PLINY COX. } No. 1367.

293 And now comes the said defendant, Pliny Cox, and waving and withdrawing any and all exceptions, hereinbefore pleaded, and admitting that his domicile is in the parish of Orleans, and for answer to the plaintiff's petition herein, saith that he denies all, and singular, the allegations contained and set forth in said petition, except as hereinafter specially admitted, and further answering, he saith, that he claims the office of branch pilot of the port of New Orleans, by virtue of the license and commission, annexed to this answer and made part hereof, marked A. That the acts of piloting, set forth in said petition as acts of intrusion into the office of branch pilot of the port of New Orleans, were done, performed and committed as therein set forth, but under the warrant and authority of said commission above referred to. That defendant never had, or held, any other commission or authority, as a branch pilot of the port of New Orleans.

That he acknowledges and admits, that at the time when said commission was issued, defendant had not, and never has
294 been, recommended to the Governor of the State as being duly qualified as to be a branch pilot of the port of New Orleans, by any board of examiners of pilots, and has never been so recommended to any governor.

That he never was examined by any board of examiners of pilots, as to his fitness for the office of branch pilot, and never had, or held, any certificate of fitness or competency as provided in sections 2708 of the Revised Statutes of the State, and insists that such examinations and certificate are not necessary, and prays the judgment of the court thereon.

And he further admits, that in acting in the issuance of said commissions, the governor acted without defendant ever having been examined by any board of examiners or pilots, or having and certificate from any such board of examiners.

And defendant further admits, that he never made, or gave, the bond with sureties in the sum of one thousand dollars, or any other sum, to the Governor of the State, or to the State, in any form, as directed in sections 2688, Revised Statutes of the
295 State, or any other form of official bond, and is informed and insists that he is not required to see into such bond, and that the statutes in that respect are not imperative.

And he further saith that he was aware of the actions of the Governor of the State in revoking the said commission above referred to, as set forth in the attested copy thereof, hereto annexed, marked B, at the time when said action was taken, but has been advised and insists that the same did not and does not in law have the effect to revoke said commission or affect its validity, and prays the judgment of the court in the premises, and that there be judgment in favor of the defendant and against the said plaintiff's demand.

(Signed) PLINY COX, *in Propria Personæ.*

Document Marked "A," referred to in Answer of Def'd't. Filed Feb'y 5, '81.

The United States of America, State of [seal] Louisiana. By William Pitt Kellogg, Governor of the State of Lou-
296 isiana, in name and by the authority of the State of Louisiana.

Know ye, that I have nominated, constituted, and appointed, and by the presents do nominate, constitute, and appoint Pliny Cox branch pilot in and for the port of New Orleans. And I do authorize and empower him to execute and fulfill the duties of that office according to law, and to have and to hold said office, with all the powers, privileges, and emoluments to the same from and after the date hereof.

In witness whereof, I have hereunto signed my name and caused the great seal of the State to be affixed at the city of New Orleans this fifteenth day of February, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States of America the ninety-eighth.

By the Governor.

[SEAL.] (Signed) WM. P. KELLOGG.

(Signed) P. G. DESLONDE,
Secretary of State.

297 *Document Marked "B," Referred to in Answer of Def'd't. Filed Feb'y 5, '81.*

State of Louisiana, Executive Department.

NEW ORLEANS, *May 29th*, 1875.

To Mr. Pliny Cox, Branch Pilot, New Orleans.

SIR: Upon official report made by the board of pilot examiners under sections 2698 and 2686, Revised Statutes, your commission as branch pilot of the port of New Orleans has this day been revoked.

Given under my hand and the seal of the State of Louisiana,

hereunto affixed, this twenty-ninth day of May, A. D. 1875, and of the Independence of the United States the ninety-ninth.

By the Governor.

[SEAL.] (Signed) W. P. KELLOGG.

N. DURAND, *Asst. Sec'y of State.*

State of Louisiana, Office of the Secretary of State.

I, the undersigned, Secretary of State of the State of Louisiana, do hereby certify the above to be a true copy of the original, duly recorded in book styled "Record of Proclamation and
298 Messages of W. P. Kellogg as Governor of Louisiana," page 554.

Given under my signature and seal of the State of Louisiana, at the city of New Orleans, this twenty-seventh day of the month of November, eighteen hundred and eighty, and of the one hundred and fifth year of the Independence of the United States of America.

[SEAL.] (Signed) OSCAR ARROYO,
Ass't Sec'ty of State.

Order fixing Case. Filed Feb'y 8th, 1880.

Civil District Court for the Parish of Orleans.

STATE OF LOUISIANA, ex rel. J. C. Egan, Att'y Gen'l,
vs.
PLINY COX. } No. 1367.

On motion of J. C. Egan, attorney general, and on suggesting to the court that the defendant herein has formally withdrawn all of the exceptions by him pleaded in this cause, and has filed an answer herein, and that the cause is at an issue in all things on the merits, and is entitled in law to trial by preference.
299 It is ordered that this cause be fixed for trial by preference on Monday, the 14th day of February, 1881, and that the defendant be notified thereof.

Case Submitted.

Extract from the Minutes of Monday, Feb'y 14, 1881.

Present: Hon. Henry L. Lazarus, judge.

STATE ex rel. J. C. Egan, att'y gen'l,
vs.
PLINY COX. } No. 1367.

This cause came on this day for trial, J. R. Beckwith for relator, defendant absent and not represented.

When, after hearing pleading and evidence, said cause being submitted, the court took the same under advisement.

Order fixing Rule, &c. Filed Feb'y 14th, 1881.

Civil District Court for the Parish of Orleans.

STATE OF LOUISIANA, ex rel. J. C. EGAN, att'y gen'l,
vs.
PLINY COX.

To Pliny Cox, defendant in the above-entitled suit.

SIR: You will please take notice that by the order of
300 the court this cause is fixed for trial, and will be tried by preference on Monday, the 14th day of Feb'y, A. D. 1881.

(Signed) J. C. EGAN, *Att'y Gen'l*,
per J. R. BECKWITH.

Dated Feb'y 8, 1881.

I admit service of the above notice this 8th day of Feb'y, 1881.
(Signed) PLINY COX.

Document "C." Filed Feb'y 14, 1881.

Extract from the record of commissioners by the Governor of Louisiana in relation to the appointment of Pliny Cox as branch pilot of the port of New Orleans.

STATE OF LOUISIANA,
OFFICE OF THE SECRETARY OF STATE.

The undersigned secretary of State of the State of Louisiana, do hereby certify that in the entry of "Record of Commissions" issued by the Governor of the State of Louisiana, the following is the only entry therein made relating to any appointment and commission of Pliny Cox as a branch pilot of the port of New Orleans, and that it does not appear in any of the records of this office that the said Pliny Cox ever executed or filed in this office the bond required by law as branch pilot of the port of New Orleans.

301 *Record of Commissions.*

(Page 20, 1870.)

Record of commissions issued to branch pilots.

Name—Pliny Cox.
Post office— ———.
Parish— ———.
Appointed—1874, Feb'y 25.
Number of bond— ———.
Bond, when filed— ———.
Oath of eligibility— ———.
Number— ———.
Commission—1874, Feb'y 25.

Oath of office filed—1874, Feb'y 18.
Number—H 95.
Resigned—Commission revoked June 1st, 1875.
Term of office expired— ———.
Given under my signature and the seal of the State of Louisiana, at the city of New Orleans, this twenty-seventh day of November, eighteen hundred and eighty.

[SEAL.] (Signed) OSCAR ARROYO,
Asst. Secretary of State.

302 *Case continued.*

Extract from the Minutes of Monday, Feb'y 21, 1881.

Present, Hon. Henry L. Lazarus, judge.

STATE OF LOUISIANA
vs.
PLINY COX. } No. 1367.

This case was continued by preference.

Testimony. Filed M'ch 3d, 1881.

Parish of Orleans, Div. E., Civil Dist. Court.

STATE OF LOUISIANA
vs.
PLINY COX. } No. 1367.

O. Arroyo, witness for plaintiff, being duly sworn, testified as follows:

Direct examination by BECKWITH, Esq., attorney for plaintiff:

Q. Mr. Arroyo, what is your official position in reference to the State government? A. Assistant secretary of State.

Q. Have you charge of the records of the State that attach to that office? A. Yes, sir.

Q. Will you look at this certificate marked "B," and state whether it is a true and correct statement? A. Yes, sir; I made it myself.

303 Q. Will you look at the paper marked *E* and state whether it is a correct transcript from the book of commissions? A. Yes, sir; it is a true extract from my book of commissions.

Q. There is nothing to indicate that P. Cox ever gave bond as pilot? A. No, sir. I have looked into all that have been filed for the last twenty years, and can find no such bond.

Document C offered and introduced in evidence. See page 17.

G. McGlauchlin, witness for plaintiff, being duly sworn, testified as follows:

Direct examination by BECKWITH, Esq., attorney for plaintiff:

Q. Do you know P. Cox? A. Yes, sir.

Q. Do you remember when he first claimed to b ea pilot? A. Yes, sir.

Q. When? A. In 1874.

Q. Who were the pilot commissioners or examiners at that time? A. Myself, Captain Francis, and Mr. Schuman.

Q. Mr. Schuman is dead? A. Yes, sir.

Q. Do you know if Mr. Cox was ever examined as a pilot? A. Not before me.

304 R. Francis, witness for plaintiff, being duly sworn, testified as follows:

Direct examination by BECKWITH, Esq., attorney for plaintiff:

Q. Were you a pilot examiner in 1874? A. I was, sir.

Q. And prior to the time of Cox claiming to be a pilot? A. Yes, sir.

Q. Was he ever examined by the examiners? A. No, sir.

Q. There were only three examiners? A. Only three.

Q. Who were they? A. McGlauchlin, Schuman, and myself.

Q. Schuman is dead? A. Yes, sir.

By the court:

Q. You were one of the pilot examiners in 1874? A. Yes, sir.

Q. How long prior to 1874? A. About two years.

Q. How long after? A. I don't remember—a short time.

Q. About how long? A. Not more than two or three months.

Q. From the time of your appointment down to the time you resigned, did Cox ever make application to be examined? A. Not to me.

Q. How many ot the examiners constitute a quorum? A. Three.

Q. All three were necessary? A. Yes, sir.

Q. You don't know that Cox was ever examined? A. No, sir; the first I knew of his being a pilot was when he

305 came down here with several others in a little sloop.

Q. Does it require much skill to be a pilot? A. Yes, sir; some places require three years and some seven. It only requires twelve months' service in a pilot boat.

Q. Did Cox ever serve? A. I never knew of his being in any pilot boat.

Q. You are pretty well acquainted at the mouth of the river? A. Ever since 1849.

Q. If Cox had ever been a pilot around the mouth of the river, would you have known it? A. Yes, sir.

Q. Did you ever hear of him before he came down with others in the sloop? A. No, sir.

Judgment.

Civil District Court, Division "E."

STATE OF LOUISIANA
vs.
PLINY COX. } No. 1367.

In this case the court considering the law and evidence to be in favor of relator, it is ordered, adjudged, and decreed that there be judgment in favor of said relator, James C. Egan, attorney general, and against the defendant, Pliny Cox, decreeing
306 the said defendant to be in no manner entitled to the office, right, or franchise of a branch pilot of the port of New Orleans; that he is without authority to act as pilot of the port of New Orleans, and that he is an unlawful usurper and intruder into such office and franchise, and that he be ejected therefrom and be enjoined and forbidden to act as a pilot or branch pilot of the port of New Orleans.

It is further adjudged and decreed that the defendant pay the costs of suit.

Judgment rendered March 3d, 1881; judgment signed March 10th, 1881.

(Signed) HENRY L. LAZARUS, *Judge.*

Certificate.

I, James T. Clark, clerk of the civil district court, for the parish of Orleans, do hereby certify the foregoing twenty-five pages do contain a true and correct transcript of all the proceedings had, documents filed, testimony and evidence adduced in the cause entitled State of Louisiana vs. Pliny Cox, insti-
307 tuted and prosecuted in this court under the No. 1367 of the docket.

In testimony whereof, I have hereunto set my hand and affixed the impress of the seal of this court on the thirteenth day of May, in the year of our Lord one thousand eight hundred and eighty-one, and the 105th year of the Independence of the United States.

[SEAL.] (Signed) JAS. T. CLARK, *Clerk.*

Transcript of record No. 1457, from the civil district court in and for the parish of Orleans. Offered in evidence by defendants Feb'y 1st, 1882.

State of Louisiana, City of New Orleans, Civil District Court for the Parish of Orleans.

Civil Dist. Court, Parish of Orleans.

PLINY COX
vs.
GEORGE OSGOOD *et als.* } No. 1457.

Petition Filed November 30th, 1881.

308 To the Honorable the Judges of the Civil District Court for the Parish of Orleans, La.

The petition of Pliny Cox, a resident of the parish of Orleans, respectfully shows:

That he is a duly qualified, appointed, and licensed branch pilot of the port of New Orleans. That he is in all things qualified and commissioned, and has been such branch pilot for a long time, and now long past. That he is a part owner in a decked pilot boat of over fifty tons burden, exclusively employed as a pilot boat at the mouth of the Mississippi river, and is entitled to all the benefits, rights, and emoluments which by law *and* sustain, accrue, and belong to branch pilots of the port of New Orleans under and by virtue of the statutes of this State. That said right of pilotage and the occupation of piloting is of great value to petitioner, the same being his livelihood and means of supporting his family. Now, petitioner avers that his right to pursue his lawful occupation is threatened and hindered by a number of persons residing in the parish of Plaquemines
309 and this parish of Orleans, who, with divers other persons residing in this parish, hereinafter mentioned, have combined, colluded, and conspired together for the purpose of preventing petitioner from exercising his occupation and receiving the emoluments thereof, and are threatening, annoying, and harassing petitioner, and injuring his business in sundry ways and divers manners. Petitioner avers that for the purpose of protecting himself he has sued out in the 24th judicial district court for the parish of Plaquemines an injunction against all those who reside in the said parish, including a close corporation and intended monopoly called the "Pilots' Association," of which J. F. Gersdorf is president, and its agents and attorneys, enjoining them and each of them from interfering in any manner with petitioner in his said lawful occupation, and said injunction has been issued and served, and the cause is now pending in said court. And petitioner avers that since said injunction,
310 from a mischievous disposition and malicious intent, the

said parties in order to avoid said injunction and continue to hinder petitioner in his lawful occupation aforesaid, have confederated, colluded, and conspired with residents of this parish, to wit: Geo. Osgood, Geo. Benson, S. B. Caldwell, Chas. Elwell, J. C. Hooper, Geo. Phillips, Rich'd Francis, F. Lary, Jno. Nichols, Hugh Neil, Alfred Ruiz, William Davis, and others unknown to your petitioner, to hinder and prevent petitioner from pursuing his lawful occupation as aforesaid, by advertising in the newspapers that petitioner's license has been revoked, that petitioner is incompetent as a qualified pilot, and by notifying shipowners and captains who may desire to employ petitioner that petitioner is not a lawful and competent pilot, and by fomenting suits against petitioner, and such ships and captains as may employ him, and by many devious manners that your petitioner cannot foresee; and petitioner avers that the same will be an
311 irreparable injury to him unless the said parties are restrained by injunction.

And petitioner alleges, that the board of administrators of the Charity Hospital, in the city of New Orleans, and who are without interest in the premises, are lending their names and authority to said defendants herein, to injure and harass petitioner by fomenting suits against petitioner and the ships that employ him, and the same will be an irreparable injury to petitioner unless the said board is restrained by an injunction.

That Geo. Osgood, F. Lourey, Jno. Nichols, Hugh Neil, Alf. Ruiz, Geo. Benson, Geo. Phillips, Richard Francis, S. B. Caldwell, Chas. Elwell, J. C. Hooper, Jno. Conrad, and Wm. Davis, although holding commissions and appointments as branch pilots, of the port of New Orleans, have no right to exercise the functions and discharge the duties appertaining to said position.

(1.) They have left their station for more than seven consecutive days, without having first obtained the leave of absence required by sec. 5 of act No. 99, of 1880; nor have they, or
312 either of them, become owners, or part owners, of one decked pilot boat of not less than fifty tons burden, kept exclusively employed as a pilot boat, as required by sec. 2702, of the Revised Statutes of 1870. That, hence, said parties, and each of them, are disqualified under the law, from performing the duties and receiving the emoluments appertaining to *to* the position of branch pilot of the port of New Orleans. That because of the failure and neglect of the board of examiners, and the master and wardens, of the port of New Orleans, to comply with the provisions of the law, the names of the aforesaid parties still figure among the number of pilots for the port of New Orleans, which is required by law not to be less than fifty. That the names of said parties, with the connivance of the board of examiners, figure among the number of pilots so as to make said

number appear greater than it really is, and by this means enable them to circumvent and defeat the requirements of the
313 law, in such case made and provided to the great injury and damage of your petitioner. That the said board of examiners have failed to report to the Governor the neglects of duty, absence without leave, and want of ownership in a pilot boat of the parties aforesaid.

Petitioner alleges his interest in matters involved in this suit far exceeds the sum of one thousand dollars. Wherefore petitioner prays for citation against Geo. Osgood, F. Laurey, Jno. Nichols, Hugh Neil, Alf. Ruiz, Geo. Benson, Geo. Phillips, Richard Francis, S. B. Caldwell, Chas. Elwell, J. C. Hooper, Jno. Conrad, Wm. Davis;

The board of administrators of the Charity Hospital in the city of New Orleans, and the master and wardens of the port of New Orleans, ordering them and each of them to answer this petition, that due proceedings be had and judgment be rendered condemning them in solido to pay your petitioner the sum of two thousand dollars.

And considering the annexed bond and affidavit, and the irreparable injury resulting from the acts complained of,
314 that an injunction issue herein to each of said defendants prohibiting, restraining, and enjoining them, and each of them, and all their agents, servants, employees, and attorneys, from in any manner interfering with, hindering, and harassing petitioner in the prosecution of his occupation as a branch pilot of the port of New Orleans, and from slandering his trade and harassing in any manner his employees in the line of his occupation. And petitioner further prays that a writ of injunction do issue herein, directed to Geo. Osgood, F. Laurey, Jno. Nichols, Geo. Benson, Hugh Neil, Alfred Ruiz, Geo. Phillips, Richard Francis, S. B. Caldwell, Chas. Elwell, J. C. Hooper, Jno. Conrad, and Wm. Davis, prohibiting them and each of them from acting or pretending to act as branch pilots for the port of New Orleans until they have complied with the law by returning to the pilot station, and by becoming owners or part owners of at least one decked pilot boat, of not less than fifty tons burden, kept exclusively employed as a pilot boat, as required by
315 law, or in the event of their failure so to do their names be stricken from the number of pilots of the port of New Orleans.

That after due proceedings said injunction be maintained and perpetuated, and petitioner prays for all costs and for general and equitable relief.

(Signed) PLINY COX, *Petitioner.*
(Signed) BRICE and PARDEE,
(Signed) E. HOWARD McCALEB,
of Counsel.

State of Louisiana, Parish of Orleans, La.

Before the undersigned authority, personally appeared Pliny Cox, who, being duly sworn, says that the allegations of the foregoing petition are true and correct to the best of my knowledge and belief.

(Signed) PLINY COX.

Sworn and subscribed before me this 4th day November, 1880.

(Signed) ANDREW HERO, JR.,
Not. Pub.

Order: Let this petition be filed and served and let, as prayed for and according to law, an injunction issue herein to each of the defendants, prohibiting, restraining, and enjoining them, and each of them, and all of their agents, servants, employees,
316 and attorneys, from in any manner interfering with, hindering or harassing petitioner in the prosecution of his occupation as a branch pilot of the port of New Orleans, and from slandering his trade, and from harassing in any manner his employees in the line of his occupation, until the further order of the court, upon plaintiff giving bond in the sum of five hundred dollars, with good and solvent security, conditioned as the law directs.

NEW ORLEANS, November 29, 1880.

(Signed) F. A. MONROE, *Judge.*

Citation on Geo. Phillips. Filed Dec. 6, 1880.

State of Louisiana, Civil District Court for the parish of Orleans, in the city of New Orleans, No. 1457.

PLINY COX *vs.* GEO. OSGOOD *et al.*

Mr. George Phillips, New Orleans:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this
317 citation, or deliver your answer to the same in the office of the clerk of the civil district court for the parish of Orleans, within ten days after the service hereof.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges of the said court, this 1st day of Dec., in the year of our Lord 1880.

(Signed) GEO. P. CAZELARD, *Deputy Clerk.*

I served a copy of within citation and accompanying petition on Geo. Phillips, defendant herein.

Returned same day.

(Signed) J. R. McCABE, *D'y Sh'ff.*

Citation on Geo. Osgood. Filed Dec. 3rd, 1880.

Civil Dist. Ct., Parish of Orleans.

PLINY COX.
vs.
GEO. OSGOOD *et al.* } No. 1457.

Mr. Geo. Osgood, New Orleans, La.

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this
318 citation, or deliver your answer to the same in the office of the clerk of the civil district court for the parish of Orleans, within ten days after the service hereof.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges of the said court, this 1st day of December, in the year of our Lord, 1880.

[SEAL.] (Signed) GEO. P. CAZELARD, *D'y Clerk.*

I served a copy of within citation and accompanying petition on Mr. Geo. Osgood, defendant herein, in person. Return same day.

(Signed) FRANK ROIG, *D'y Sh'ff.*

Citation on Richard Francis. Filed Dec. 2nd, 1880.

Civil District Court, Parish of Orleans.

PLINY COX
vs.
GEO. OSGOOD *et al.* } No. 1457.

Mr. Richard Francis, New Orleans.

You are hereby summoned to comply with the demaud contained in the petition, of which a copy accompanies this
319 citation, or deliver your answer to the same in the office of the clerk of the civil district court for the parish of Orleans, within ten days after the service hereof.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges of the said court, this 1st day of December, in the year of our Lord 1880.

[SEAL.] (Signed) GEO. P. CAZELARD, *D'y Clerk.*

I served a copy of within citation and accompanying petition personally on Richard Francis, defendant herein.

(Signed) JAS. A. McCABE, *D'y Sh'ff.*

Returned same day.

Bond. Filed Nov. 30th, 1880.

Civil Dist. Ct., Parish of Orleans.

PLINY COX
vs.
GEO. OSGOOD *et al.* } No. 1457.

Know all men by these presents, that we, Pliny Cox, as principal, and John W. Black, as security, of the city of New Orleans and State of Louisiana, are held and firmly bound unto Geo. Osgood, F. Lourey, John Nichols, Geo. Benson,
320 Hugh Neil, Alf. Ruiz, Geo. Phillips, Richard Francis, S. B. Caldwell, Chas. Elwell, J. C. Hooper, John Conrad, Wm. Davis, and the Board of Administrators of the Charity Hospital, defendants, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to said defendants, their heirs, executors, administrators, and assigns, for which payment well and truly to be made we bind ourselves, and each of us by himself, and each of our heirs, executors, administrators, firmly by these presents. Sealed with our seals, and dated the 29th day of November, in the year of our Lord 1880.

Whereas the said Pliny Cox has this day presented a petition to the honorable the civil district court for the parish of Orleans, praying for a writ of injunction.

Now the condition of the above obligation is that we, the above-bound Pliny Cox and John W. Black, will well and truly pay to the said , the defendants in said injunction, all such damages as they may recover against us in case it should be decided that the injunction was unlawfully obtained.

321 (Signed) PLINY COX, [SEAL.]
Per Brice and Pardee, and E. H. McCaleb, *Attorneys.*
JOHN W. BLACK. [SEAL.]

Exception and Answer of Defendants. Filed Dec. 11th, 1881.

Civil Dist. C't, Parish of Orleans.

PLINY COX
vs.
GEO. OSGOOD *et al.* } No. 1457.

And now come said defendants, George Osgood and George Phillips, and for exception to said plaintiff's petition show to the court:

1st. Each for himself say: That the said plaintiff's petition does not disclose a cause of action or any right of action against the defendants, either collectively or individually, and prays for judgment against said plaintiff with costs. And for answer to

said plaintiff's petition in the event that the above exception is adjudged insufficient, and not otherwise, each for himself doth deny all and singular the allegations in said plaintiff's petition contained and set forth, and specially deny that the said
322 plaintiff, now or at any time, has been a duly licensed pilot or branch pilot of the port of New Orleans, and say that said plaintiff never has had or possessed the right or authority to pilot vessels as a branch pilot of the port of New Orleans, nor has he had or did he possess any right to receive pay or emolument therefor, or pursue the office or avocation of branch pilot of the port of New Orleans, as he, the said plaintiff, well knew when he instituted this action. And said defendants specially deny that they, or any of them, have in any manner interfered with any lawful right of the plaintiff, and that the pretence on the part of said plaintiff that he is a duly licensed branch pilot of the port of New Orleans is a sham and a fraud and an imposition upon the court. That this action is one of a series of lawless acts on the part of the plaintiff and his advisers and abettors to protect himself from interruption or hindrance in a course of wrong and crime and open defiance of the laws of the State, and the rights of others, and as he and his abettors assert pilot vessels "under the cover of an injunction," he, the said
323 plaintiff, at the times, well knowing that he has no legal authority as right to act as branch pilot of the port of New Orleans, and that his pretence that he is or ever was a duly appointed branch pilot is in all things false. Wherefore defendants pray that there be judgment against said plaintiff with costs.

(Signed) J. R. BECKWITH,
Att'y for Deft.

Exception of Richard Francis. Filed Dec. 11th, 1881.

Civil Dist. Court, Parish of Orleans.

PLIN COX
vs.
GEO. OSGOOD *et al.* } No. 1457.

And now comes the said defendant, Richard Francis, and for exception to said plaintiff's petition saith that this court is without jurisdiction of this defendant and of the alleged cause of action against him, for he saith that at the time of the commencement of this action this defendant was, and still is, a resident of the Plaquemines, in this State, and that his domicile then was, and still is, in said just-named parish, and that he was not at
324 the time of the institution of this suit, nor has he at any time since that time been a resident of or domiciliated in the parish of Orleans. Wherefore he prays that there be judg-

ment in his favor against the said plaintiff, and that said petition be dismissed with costs.

(Signed) J. R. BECKWITH,
Atty. for Deft.

Stipulations. Filed March 12th, 1881.

Civil Dist. Ct., Parish of Orleans.

PLINY COX
vs.
GEO. OSGOOD *et al.* } No. 1457.

I do hereby stipulate and agree that there be final judgment in this cause in favor of the defendants and against the plaintiff, with costs, and that such judgment be entered on the filing of this stipulations, and that said judgment be signed at once without the legal delay of three days and become final at once.

(Signed) PLINY COX.

J. R. Beckwith, being duly sworn, says that he is acquainted with Pliny Cox, and that the signature to the foregoing is the genuine signature of him, the said Pliny Cox.

325 (Signed) J. R. BECKWITH.

Sworn to and subscribed before me, this 12th Mch., 1881.
(Signed) H. MIESTER, *Dy. Cl'k.*

Judgment. Rendered March 15th, 1881, *and signed March 16th*, 1881.

Civil Dist. Ct., Parish of Orleans.

PLINY COX
vs.
GEO. OSGOOD *et al.* } No. 1457.

In this case, the court, considering the stipulation filed herein by Pliny Cox, the plaintiff, and the consent of defendants thereto, it is ordered, adjudged, and decreed that there be judgment in favor of defendants, with costs.

Judgment rendered, March 15th, 1881.
Judgment signed, March 16th, 1881.

(Signed) HENRY L. LAZARUS, *Judge.*

Certificate.

I, James T. Clark, clerk of the civil district court for the parish of Orleans, do hereby certify the foregoing eighteen
326 pages do contain a true and correct transcript of all the proceedings had, documents filed, testimony and evidence adduced, in the cause entitled Pliny Cox *vs.* George Osgood et

als., instituted and prosecuted in this court under the No. 1457 of the docket.

In testimony whereof, I have hereunto set my hand and affixed the impress of the seal of this court, on this 17th day of January, in the year of our Lord 1882, and the 106th year of the Independence of the United States of America.

[SEAL.] (Signed) JAS. T. CLARK, *Clerk.*

Transcript of record No. 884, from the civil district court in and for the parish of Orleans. Offered in evidence by defendants, February 1st, 1882.

State of Louisiana, Civil District Court for the Parish of Orleans, city of New Orleans.

Petition. Filed Oct. 22d, 1880.

327 Civil District Court for the Parish of Orleans.

GEORGE OSGOOD
vs.
J. W. BLACK *et al.* } No. 884.

To the honorable the civil district court for the parish of Orleans:

The petition of George Osgood, a resident of the parish of Orleans, respectfully shows unto the court:

That he is a duly qualified, appointed, and licensed branch pilot of the port of New Orleans; that he is in all things qualified and commissioned, and has been a licensed branch pilot as aforesaid for a long time now last past; that he is a part owner in a decked pilot boat of over fifty tons burden, exclusively employed as a pilot boat at the mouth of the Mississippi river, and is entitled to all of the benefits, rights, and emoluments which by law accrue and belong to branch pilots of the port of New Orleans under and by virtue of the statutes of this State in such case made and provided; that said right of pilotage and the occupation of piloting is of great value to this petitioner, and that a large share of the value thereof rests in the exclusive right to pilot vessels
328 at the mouth of the Mississippi river, conferred upon licensed pilots by the statutes of this State.

That any unlawful interference with said right and its exclusiveness as conferred by statute by unlicensed persons not licensed pilots tends to destroy and render valueless all the property and right conferred by law upon your petitioner as a licensed pilot as aforesaid, and thereby cause your petitioner to suffer great pecuniary loss and damage.

And petitioner further represents that one Hiram Follett and one J. W. Black, both of whom reside in the parish of Orleans, have confederated, combined together, and unlawfully conspire

to wrong and injure this petitioner as a licensed pilot as aforesaid.

That your petitioner is informed, and verily believes, and therefore avers, that the said Black is not now, and at no time has been, a licensed branch pilot of the port of New Orleans, and has never passed an examination, or has been commissioned or qualified as such branch pilot, and has no right or authority
329 to directly or indirectly engage in the pilotage of vessels at the mouth of the Mississippi river or port of New Orleans, and further that the said defendant Follett also never was a duly qualified pilot with lawful right to engage in such pilotage.

That your petitioner is informed and believes and avers the fact to be that on or about the 13th day of January, A. D. 1874, the said Hiram Follett imposed upon the Governor of the State, and without any previous examination as to his qualification or any recommendation to the Governor, as required by law, induced the Governor of the State to issue to him a commission as branch pilot of the port of New Orleans.

That said commission was null and void at the date of its execution; that petitioner has caused a search of the public archives to be made, and is informed and believes, and therefore avers the fact to be, that the said Follett never made, executed, or delivered the bond required by law of all branch pilots, and in that respect never attempted to qualify as a branch pilot.

That it coming to the knowledge of the said Governor
330 that the said Follett was not entitled to said commission, and to be a branch pilot, upon due report and proceedings had on or about the 29th day of May, 1875, having full and competent authority in that behalf, he, the said Governor, in all things, revoked, recalled, vacated, and set aside said supposed commission as a branch pilot so issued to the said Follett, as will more fully and at large appear from an attested copy of the order and proclamation of the said Governor hereto annexed, marked "A" and made a part hereof as aforesaid, all of which said facts the said Follett at all times well knew.

That no appointment of the said Follett as branch pilot of the port of New Orleans has been made since the said revocation, nor has he had any show of right to act as such pilot since the date of such revocation.

Yet the said defendants, J. W. Black and Hiram Follett, intending to bid defiance to the laws of the State, and injure and wrong your petitioner among other duly-licensed pilots,
331 have entered into an illegal and fraudulent combination by which they intend to deprive all duly-licensed pilots of their occupation, and of the profits which should and otherwise would accrue to your petitioner and others of the pilots.

That in order to accomplish said unlawful purposes the said Black, who either owns or claims to control the steamboat called the "Mary Lee," a vessel of sufficient power and endurance to enable it to cruise off the mouth of the Mississippi river, in the Gulf of Mexico, on pilot ground, has, under said fraudulent agreement with the said Follett, taken the said Follett on board said vessel and pretends that the said Mary Lee is a regular and legitimate pilot boat, and that the said pilot is a duly licensed pilot, with the right to pilot for pay, or otherwise, any and all vessels across the bar and through the mouth of the Mississippi river, and are so engaged in piloting vessels, that in order to deceive the masters of vessels requiring pilot service and compelled to pay therefor, when the services of a licensed pilot is offered,
332 the said Follett at the instigation of the said Black, and to carry out the fraud on his part, exhibits as petitioner is informed to such masters some worthless paper which purports to be his commission and appointment as a branch pilot of the port of New Orleans, probably the revoked commission so obtained by him in wrong as aforesaid.

That your petitioner is also informed and believes that in order to increase the measure of wrong and damage which said defendants seeks to cause your petitioner, and other duly licensed pilots, the defendants, as a part of their fraudulent scheme, have despatched to the ports of England, an agent who is instructed to represent that said defendants have the right to pilot vessels at the port of New Orleans, and delude the owners, agents, or masters of vessels bound to the port of New Orleans, into contracts whereby they shall bind themselves to have such ships piloted on their arrival at the mouth of the Mississippi river by the said unlicensed and unlawful combination so made, en-
333 tered into and controlled by said defendants. That one, Geo. A. Sheldon, also a resident of the parish of Orleans, is the master of the said Mary Lee, and fully aware of, and a part of, said unlawful combination, and is also a party to all of the wrongs herein complained of, and is also made a defendant in this action.

That the wrongful acts of the said defendants have caused your petitioner great damage, and if not inhibited and restrained by the courts will destroy and render worthless the occupation of branch pilots of the port of New Orleans, and impair the right of your petitioner as a branch pilot as aforesaid, wherefore your petitioner prays that the said J. W. Black, Hiram Follett, and George A. Sheldon may each of them be duly cited to answer this petition within legal delay and that after due proceedings had that said defendants be condemned in solido to pay your petitioner fifteen hundred dollars as damages caused and resulting to your petitioner from the said unlawful acts of the said defendants

and the said petition and bond and affidavit annexed con-
334 sidered that the court grant and allow unto your petitioner herein an order and mandate of injunction directed to said defendants, and each of them, their agents, servants, workmen, and attorneys, commanding them and each of them to refrain and desist from acting or pretending to act, either directly or indirectly as branch pilots of the port of New Orleans, and from piloting, conducting, or pretending or attempting to pilot or conduct any craft, ship, or steamship or other vessel which is by law required to take a pilot or remunerate by half pilotage fees, or otherwise, any licensed branch pilot who may offer his services to pilot such vessels, and from exhibiting or permitting to be exhibited to any master or officer of any vessel, either approaching or departing from the port of New Orleans, any pretended appointment or commission issued by any Governor of this State, purporting to be the appointment of the said Hiram Follett, or any other person, as a branch pilot of the port of New Orleans, when the same
335 is not in force, and is either revoked, recalled, cancelled, or suspended, and from entering into any combination of and kind or character, with any person whatsoever to unlawfully procure the piloting of any craft or vessel entering or departing from the port of New Orleans, for hire or otherwise, and from doing any other act or thing which can or may interfere with the right of a duly licensed branch pilot of the port of New Orleans, and from navigating the said steam tug or vessel called "Mary Lee," as a pilot boat unless the said vessel is owned in whole or in part by a duly licensed and commissioned branch pilot, used exclusively as a pilot boat, by duly licensed pilots, holding commissions as such from the proper authority of the State, and from collecting, or pretending or attempting to collect, any money, fee, or consideration for piloting directly or conducting any vessel to or from the port of New Orleans. And further, that the said defendant, Hiram Follett, be specially enjoined and restrained from pretending that the
336 supposed commission issued to him by William P. Kellogg, late Governor of this State, and referred to in Exhibit "A," annexed to this petition, or any other commission not in full force and effect, in any manner authorizes him to act as a branch pilot of the port of New Orleans, and from exhibiting the same to any person, master, agent, officer, or officers of any vessels as conferring on him any power, right, or authority to pilot any vessel, and from doing any act or thing in the way of piloting vessels, or taking or receiving any compensation, either directly or indirectly, by reason of any such document or pretended commission, and that on final hearing said injunction be made perpetual, and that the defendants be condemned further to pay the costs of this action and for general relief in the premises, &c.

(Signed) J. R. BECKWITH, *Att'y for Pl'ff.*

Affidavit.

STATE OF LOUISIANA, *Parish of Orleans.*

337 George Osgood, being first duly sworn, deposeth and saith, that he is the plaintiff named in the foregoing petition; that he knows the contents thereof, and that the matters therein set forth, and that according to his belief the said facts render an injunction necessary, and that an injunction is necessary to save plaintiff from irreparable injury which will otherwise result to plaintiff.

(Signed) GEORGE OSGOOD.

Sworn to and subscribed before me, this 22nd October, 1880.

(Signed) THEO. GUYOL, *Not. Pub.*

Document "A." Annexed to Petition.

STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,
NEW ORLEANS, *May 29th*, 1875.

To Mr. Hiram Follett, Branch Pilot, New Orleans.

SIR: Upon official report of the board of examiners that your commission as branch pilot was issued in error and not in
338 compliance with sections 2686 and 2702, revised statutes, your commission as branch pilot of the port of New Orleans has this day been revoked.

Given under my hand and the seal of the State hereunto affixed, this 29th day of May, A. D. 1875, and of the Independence of the United States the ninety-ninth.

(Signed) W. P. KELLOGG.

By the Governor:

(Signed) N. DURAND,
Asst. Secretary of State.

State of Louisiana, Office of the Secretary of State.

I, the undersigned secretary of State of the State of Louisiana, do hereby certify the above to be a true copy of the original, duly recorded in the book of record of executive messages and communications of the Governor of the State of Louisiana on the 29th day of May, 1875, at page 454.

Witness my signature and the seal of the State of Louisiana, at the city of New Orleans, this fifteenth day of Oct., A. D. 1880.

(Signed) OSCAR ARROYO,
Asst. Sec'y of State.

339 *Order for Injunction.*

Let a writ of injunction issue herein, as prayed for and accord-

ing to law, upon plaintiff, giving bond in the sum of five hundred dollars, conditioned as the law directs.

New Orleans, October 22nd, 1880.

(Signed) HENRY L. LAZARUS, *Judge.*

Bond of Injunction. Filed Oct. 22nd, 1880.

Know all men by these presents, that we, George Osgood, as principal, and J. W. Westerfield, as security, of the city of New Orleans and State of Louisiana, are held and firmly bound unto J. W. Black, Hiram Follett, and George A. Sheldon, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to said J. W. Black, Hiram Follett, and Geo. A. Sheldon, their heirs, executors and administrators, and assigns, for which payment, well and truly to be made, we bind ourselves and each of us, by himself and each of our heirs, execu-
340 tors, administrators, firmly by these presents. Sealed with our seals and dated the 22nd of October, in the year of our Lord, 1880.

Whereas, the said ———— ha—— this day presented a petition to the honorable the civil district court for the parish of Orleans, praying a writ of injunction to issue.

Now, the conditions of the above obligation is, that we, the above-bound George Osgood and J. W. Westerfield, will well and truly pay to the said J. W. Black, Hiram Follett, and George A. Sheldon, the defendant in said writ of injunction, all such damages as they may recover against us in case it should be decided that the injunction was wrongfully obtained.

Signed, sealed, and delivered in the presence of—

(Signed) J. R. BECKWITH.

" GEORGE OSGOOD. [L. S.]

" J. W. WESTERFIELD. [L. S.]

Writ of Injunction. Issued October 23rd, 1880.

Civil Dist. Court.

GEORGE OSGOOD
vs.
J. W. BLACK *et al.* } No. 884.

341 State of Louisiana, Civil District Court for the Parish of Orleans.

The State of Louisiana to J. W. Black and George A. Sheldon, their agents, servants, workmen, and attorneys, New Orleans, "Greeting."

You are hereby commanded, enjoined, and restrained, in the name of the State of Louisiana and of the civil district court for

the parish of Orleans, to refrain and desist from acting or pretending to act, either directly or indirectly, as branch pilot of the port of New Orleans, and from piloting, conducting, or attempting to pilot or conduct any craft, ship, steamship, or other vessel which is by law required to take a pilot, or remunerate by half-pilotage fees or otherwise, and license branch pilot who may offer his services to pilot such vessel, or from exhibiting or permitting to be exhibited to any master or officer of any vessel either approaching or departing from the port of New Orleans, any pretended appointment or commission issued by and Governor of this
342 State, purporting to be the appointment of the said Hiram Follett or any other person or branch pilot of the port of New Orleans when the same is not in force, or is either revoked, recalled, cancelled, or suspended, and from entering into any combination of any kind or character, neither any person whatsoever, to unlawfully procure the piloting of any craft or vessel, entering or departing from the port of New Orleans, for hire or otherwise, and from doing any act or thing which can or may interfere with the right of a duly-licensed branch pilot of the port of New Orleans, and from navigating the steam tug or vessel called "Mary Lee," unless the said vessel is owned in whole or in part by a duly-licensed pilot, holding commissions as such from the proper authorities of the State, and from collecting or pretending or attempting to collect any money, fee, or consideration for piloting, directing, or conducting any vessel to or from the port of New Orleans.

Witness the Honorables A. L. Tissot, W. T. Houston,
343 F. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges to our said court, this 23d day of Oct., in the year of our Lord one thousand eight hundred and 80, and in the one hundred and fifth year of the Independence of the United States.

Sheriff's Return to Writ. Received October 23d, 1880.

And on the 29th day of Oct., 1880, I served a copy of the within writ of injunction on George A. Sheldon, defendant herein, by leaving the same at his domicile, No. 57 Port street, in the hands of Mrs. G. A. Sheldon, living and residing in said domicile, whose name and other facts connected with this service I learned by interrogating Mrs. Geo. A. Sheldon, defendant being absent from his domicile at time of said service.

Return same day.

(Signed) FRANK ROIG, *D'y Sh'ff.*

And on the 23d day of October I served a copy of within writ of injunction on J. W. Black, defendant herein.

Sheriff's fee, $2.
Returned same day.
(Signed) JAMES F. McCABE, *D'y Sh'ff.*

344 *Sheriff's Return.*

And on the 27th of October, 1880, served a copy of within injunction on Hiram Follett by leaving the same at his domicile, No. 56 Piety street, in the hand of Mrs. Hiram Follett, a person apparently over the age of 14 years, living and residing in said domicile, and whose name and other facts connected with the service I learned by interrogating Mrs. Hiram Follett, that Hiram Follett being absent from home at the time of said service.
Sheriff's fees, $2.
Returned same day.
(Signed) FRANK ROIG, *D'y Sh'ff.*

Rule for Contempt. Filed November 1st, 1880.

As per Minutes.

Civil District Court.

GEORGE OSGOOD
vs.
J. W. BLACK *et al.* } No. 884.

On motion of J. R. Beckwith, for plaintiff, and on suggesting to the court that since the date of the service of the writ of
345 injunction herein on defendants, and while said writ and order was in full force and effect, and defendants had full knowledge of said writ and its command, said defendants have wilfully violated said order and writ and have used the said steamboat "Mary Lee" as a pilot-boat, without having a licensed branch pilot on board of said vessel, and have been engaged in piloting said vessels by law required to take a licensed branch pilot across and through the mouth of the Mississippi river, neither of said defendants having a right to pilot said vessels, that the said defendant, J. W. Black, has permitted said Mary Lee to be used, and has directed, aided and abetted said other defendants, in said contempt of the authority of this court.

It is ordered that said defendants, J. W. Black, Hiram Follett, and George A. Sheldon, show cause on Saturday, November 6th, 1880, at 11 o'clock, a. m., why they, and each of them, should not be attached and punished for contempt of the authority of this court, and that they be notified of this rule.

346 *Answer to Rule. Filed Nov. 6th*, 1880.

Civil Dist. Court.

GEORGE OSGOOD
vs.
J. W. BLACK *et al.* } No. 884.

Now, into this honorable court comes J. W. Black, who, for answer to the rule for contempt herein taken, says:

That he has not or does not intend to violate or disobey any order of this court while the same is [in] existence and unrevoked.

That the proceedings were instituted by defendants in the suit of Hiram Follett *vs.* Pilot's Association and others, and Pliny Cox *vs.* J. W. Reed and others, 24th judicial district court for the parish of Plaquemines, for the purpose of evading the operations of the injunctions issued in said court and in disregard to the jurisdiction of the U. S. circuit court, 5th circuit and district of Louisiana, previously acquired over the matters and things in
347 controversy in this case in the suit of Rich'd Francis *et al. vs.* J. W. Black, No. 9111 of the docket thereof.

2nd. That plaintiff is a mere nominal party, having no real, actual or subsisting interest in the matters in controversy, he having long since abandoned the occupation of pilot, absented himself from the pilot station, and is now and has been for many months passed pursuing a different avocation in the city of New Orleans, to wit, a keeper of a grocery store in the city of New Orleans in the 3d district.

3rd. That plaintiff pretended interest in a pilot boat was transferred to him by title, without consideration, on the very day of the institution of this suit, and in aid of the conspiracy formed by the members of the pilots' association, to which plaintiff is lending himself.

4th. That this court has no jurisdiction to enjoin the alleged intended commission of a crime in another parish beyond its limits and over which there is an adequate remedy at law.

5th. That the commissions issued by the Governor of
348 the State could not be revoked in the manner alleged.

6th. That the writ of injunction herein issued has been dissolved; that no appeal could legally be taken from said order of dissolution, the injury complained of not being alleged to be irreparable; and

7th. That defendants are powerless to remedy said error at this time, and the Supreme Court alone has jurisdiction over the matter herein by writ of prohibition.

Wherefore he prays that said rule be discharged at plaintiff's cost, and for all general and equitable relief.

J. W. BLACK.

Sworn to and subscribed before me, this 6th Nov., 1880.
FRANK WALL, *D'y Cl'k.*

Rule submitted.

Extract from the Minutes of Division D, Friday, November 12th, 1880. Present, Hon. N. H. Rightor, Judge.

Civil Dist. Court.

GEORGE OSGOOD
vs.
J. W. BLACK *et al.* } No. 884.

349 The rule for contempt herein taken came on again this day for trial. J. R. Beckwith for plaintiff in rule; E. H. McCaleb, A. G. Brice for defendant in rule.

After hearing further pleadings and evidence, said rule being sumitted, with privilege to counsel to file briefs on or before Saturday, 13th inst., and the court took the same under advisement.

Reasons for Judgment on Rule for Contempt. Filed Nov. 25th, 1880.

GEORGE OSGOOD
vs.
J. W. BLACK *et al.* } No. 884.

On the one hand, it is questionable whether an injunction of this kind should have originally issued without giving defendants a hearing.

It is questionable whether the injunction should have been set aside on bond without giving plaintiff a hearing. It is questionable whether a responsive appeal should have been granted from the latter order. But all this has been done, and the orig-
350 inal injunction stands as the mandate of the court, and until it is dissolved or rescinded in due course of law, it must be executed and obeyed.

It is therefore ordered that the rule herein taken for contempt be made absolute, and all the defendants therein condemned to pay, and each of them, a fine of twenty-five dollars, or be confined five days in the parish prison.

Any further disobedience of the injunction will be visited with the utmost penalties of the law.

Rule Absolute.

Extract from the Minutes of Division "D." Friday, November 26th, 1880.

Present: Hon. N. H. Rightor, judge.

In the matter of the rule for contempt herein taken and sub-

mitted to the court for adjudication, for the reasons assigned in the written opinion of the court this day delivered and filed,

It is ordered that said rule be made absolute, and accordingly that the defendants, J. W. Black, Hiram Follett, and
351 George A. Sheldon, be adjudged guilty of con[tempt] of the authority of this court in violating the writ of injunction issued in this case, and the said defendants, J. W. Black, Hiram Follett, and George A. Sheldon, be, and they and each of them are, condemned to pay a fine of twenty-five dollars, and in default of payment of said fine, that said defendants, J. W. Black, Hiram Follett, and George A. Sheldon, be imprisoned and confined in the parish prison, in this parish, each for the term of five days.

Rule for Contempt.

Extract from the Minutes of Division "D," Tuesday, December 21st, 1880.

Present, the Hon. N. H. Rightor, judge.

Civil Dist. Court.

GEORGE OSGOOD
vs.
J. W. BLACK *et al.* } No. 884.

On motion of J. R. Beckwith, attorney for petitioner:

It is ordered that the defendants, J. W. Black, Hiram Follett, and George A. Sheldon, show cause on Friday, December 24th, 1880, at 11 a. m., why they should not again be punished
352 for their contempt of authority of this court, in disobedience of the orders and injunctions in this case, for the reasons on file.

Rule for Contempt Submitted.

Extract from the Minutes of Division "D," Friday, December 24th, 1880.

Civil District Court.

GEORGE OSGOOD
vs.
J. W. BLACK *et als.* } No. 884.

Present: Hon. N. H. Rightor, judge.

The rule herein taken for contempt came up this day for trial.

Present: J. R. Beckwith, for plaintiff in rule; E. H. McCaleb and Brice and Pardee, for defendants in rule.

After hearing pleadings, evidence, and argument of counsel, said rule being submitted, the court took the same under advisement.

Stipulations of Follett. Filed February 28th, 1881.

Civil District Court.

GEORGE OSGOOD, RICHARD FRANCIS *et al.*, Intervenors,
vs.
J. W. BLACK *et al.* } No. 884.

353 Hiram Follett, one of the defendants in this cause, hereby stipulates and agrees, that the matters and allegations contained and set forth in the plaintiff petition herein, are true as therein set forth, and also that the matters contained and set forth in the petition of intervention of Richard Francis et al., filed in this cause, are true as therein set forth, and that the plaintiff and the said intervenors, who have joined the plaintiff in this cause, Richard Francis et al., the intervenors, are entitled to the judgment and relief prayed for by them, and consents that the said civil district court for the parish of Orleans, or the circuit court of the United States for the district of Louisiana, if it be held that this cause has been removed to said circuit court, under final judgment and decree in this cause as prayed for, and adjudge and decree that the said defendant, Hiram Follett, was not, and is not, a branch pilot of the port of New Orleans, and has not, and had, no right to act as such pilot, and that the injunction herein be made final and perpetual against this
354 defendant, as prayed for in said petition, with cost, and that the plaintiff George Osgood's right of action for damages against this defendant, be reserved to the said Osgood.

(Signed) HIRAM FOLLETT.

Judgment against Follett.

Extract from Minutes of Division "B," Monday, February 28th, 1881.

Present: Hon. N. H. Rightor, judge.

GEORGE OSGOOD
vs.
J. W. BLACK *et al.* } No. 884.

Division D.

Considering the pleadings and stipulations of the defendant, Hiram Follett, on file—

It is ordered, adjudged, and decreed, that there be judgment herein in favor of the said plaintiff, and the said Richard Francis, who were intervenors in this cause, and joined the plaintiff

herein, and against the defendant, Hiram Follett, as stated in said stipulation; that the writ of injunction herein issued against the defendant, Hiram Follett, be made final and perpetual,
355 and it is also adjudged and decreed, that at the time set forth in the petition of said plaintiff and said intervenors, the said defendant, Hiram Follett, was not, and at no time since that time has been, a branch pilot of the port of New Orleans, and has, and at no time had the right to be or act as such pilot; that he be and hereby is perpetually inhibited and enjoined from piloting, or attempting to pilot, any vessel, or vessels, as branch pilot of the port of New Orleans, either directly or indirectly, either for hire or pay, or otherwise, and from in any manner, pretending that the paper, or supposed commission, or license, referred to in plaintiff's petition, and the petition of intervenors, confers, or conferred, on him any right or authority to act as branch pilot of the port of New Orleans, and from in any manner, repeating or continuing the acts complained of in said petitions of plaintiff and of intervenors.

That the said plaintiff and the said intervenors, Richard Francis and others, have and recover of the said defendant, Hiram Follett, all costs, and that the right of action of said
356 plaintiff, George Osgood, against said defendant, Hiram Follett, for damages, be reserved unto the said Osgood to be prosecuted in another action.

Certificate.

I, James T. Clark, clerk of the civil district court for the parish of Orleans, do hereby certify the foregoing thirty-two pages do contain a true and correct transcript of all the proceedings had, documents filed, testimony and evidence adduced in the cause entitled George Osgeod *vs.* J. W. Black et al., No. 884 of the docket of this court.

In testimony whereof, I have hereunto set my hand and affixed the impress of the seal of this court, on this eighteenth day of January, 1882, and in the 106th year of the Independence of the United States of America.

[SEAL.] (Signed) JAS. T. CLARK, *Clerk.*

357 Transcript of record No. 2142, from the civil district court in and for the parish of Orleans. Offered in evidence by defendants, February 1st, 1882.

State of Louisiana, Civil District Court for the Parish of Orleans.

Petition. Filed January 22d, 1881.

Civil Dist. Ct., Parish of Orleans.

RICHARD FRANCIS *et al.*
vs.
GEORGE L. FALCONI. } No. 2142.

To the honorable the Civil District Court for the Parish of Orleans:

The petition of Richard Francis, a resident of the parish of Plaquemines, in this State, William T. Lavine, Charles W. Read, William F. Higgins, John McLaughlin, Joseph Smith, John Ervine, Robert M. Wilson, Asa A. Douglass, Charles Dennis, Phillip Wurtez, Thomas D. Lewis, Daniel B. Morgan, Jo-
358 seph Preble, Robert H. Tilford, Gustave Gersdorf, Francis Bailey, Oscar Shultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, William E. Pendleton, Henry Buttcher, Benjamin S. Ames, Peter Douham, Edward Michel, Francis Long, Charles Stelark, Edward C. Bannon, Francis Williams, Nathaniel L. Cloutman, Thomas Wilson, Robert T. Wilson, James W. Lyons, William B. Findlay, and Joseph Redman, residents individually of the parish of Plaquemines aforesaid, show unto this honorable court that they and each of them, on and prior to 27th day of May, 1879, were duly licensed and qualified branch pilots of the port of New Orleans, in this State, and in all things authorized to exercise the duties, powers, and receive the emoluments which appertain to the said office, as prescribed by the statute of the State. That on the said 27th day of May, 1879, your petitioner, with the exception of the said Richard Francis, made and entered into an agreement and voluntary association, between and among themselves, and with the defendant herein, George A. Falconi,
359 at this time a resident of the parish of Orleans, in this State, and resides at No. 45½ Washington street, in said city, as petitioners are informed and believes; and at the same time made and constituted the plaintiff, Richard Francis, the agent and attorney-in-fact of the said association by irrevocable power; that said voluntary association was made and entered into under and by authority of the provisions of section 2707 of the revised statutes of this State for the furtherance of their interests as duly licensed branch pilots as aforesaid; that by the terms of said agreement and association the object thereof was to

carry on the business of piloting vessels over the bar and through the various passes and entrances at the mouth of the Mississippi river, both to and from the sea, and all of the business relating to the duties of branch pilots of the port of New Orleans; said association commenced and went in effect and operation on the first day of June, 1879, and is to continue and last for the period of twenty years, from and after said 1st day of June, 1879, or until the 1st day of June, 1899, and to be known, and is known, as the Branch Pilots of the Port of New Orleans, Louisiana.

360 And the domicile of said association was, and is, fixed and established in said agreement in writing at the city of New Orleans, in the parish of Orleans; that it was agreed that the various members of said association should contribute to the property of said association to the value and extent of sixty-three thousand dollars, in the manner and form as set forth in said act of association, a copy whereof is annexed to this petition and made a part hereof, marked Exhibit "A," and to which the plaintiffs at all times refer as a part of this petition and for the terms and conditions of said contract and agreement of association; that by the terms of said agreement the said plaintiff, Richard Francis, was, and is, made the general agent and manager of said association as therein set forth, and for his services was, and is, to receive as pay and compensation for his services the full sum of five thousand dollars per annum, payable monthly, to be secured by a mortgage on the property of the said association,

361 as fully and at large appears by said Exhibit "A."

The said mortgage was in due form, made and executed by said association, and is in full force and effect; that by and in the seventh article of said agreement the said parties to said association bound and obligated themselves, each for himself, that in addition to the capital which each member was to contribute to the association each of said members of said association, and particularly the said George A. Falconi, should bring to the said partnership and association and its business all of his time, skill, influence, and attention and labor, and would not enter into or carry on any business of piloting or any business of a like character with the business of said association, either for his own account or for or in conjunction with any other person, as fully and at large appears by said seventh article in said Exhibit "A."

That in entering into said association many of your petitioners surrendered to the association large and profitable interests, much larger and more profitable than any interest which has or

362 will accrue to them under the terms of said association, and that said provision of said article seventh found a large part of the consideration which induced them to enter said association, sign said agreement, and convey their individual property

to said association, and would not have entered into said association except for the stipulation contained in said seventh article.

That from the said 1st of June, 1879, said association has been in full operation, and the terms of said agreement have been honestly observed and kept by all the members of said association except the said George A. Falconi, defendant herein; that he honestly observed and kept the terms and conditions of said obligation binding upon him, and received all of the benefits, emoluments, and profits accruing to him under said agreement until within a short time now last past, when he wilfully and fraudulently disregarded his said contract and obligation, and wilfully and unlawfully entered into a fraudulent scheme and plan to damage and destroy the said association and
363 defeat its entire purpose, and subject it and all of his associates to serious pecuniary loss and damage by means of his frauds and lawless acts.

That in order to affect said unlawful purpose, the said defendant on or about the 10th of January, 1881, entered into a fraudulent and unlawful combination and conspiracy with one J. W. Black, who had before that time been engaged in an unlawful, fraudulent scheme to injure your petitioner, by putting on board a steam tug certain persons, not licensed branch pilots of the port of New Orleans, and pretending that the said tug boat was a pilot boat, and that said unlicensed persons were pilots, and still carries on a fraudulent and unlawful piloting business, to the great injury of the said association; that to assist the said Black in his fraudulent and unlawful scheme, the said defendant, Falconi, has absolutely the stipulations of said contract of association, and particularly the said seventh article thereof, and is now engaged in piloting vessels to and from the sea through the passes and channels at the mouth of the Mississippi river, either for himself, in oppo-
364 sition to said association, or in conjunction with the said Black, and either retaining the fees received for his said fraudulent act of piloting, or dividing the same with the said Black, and in no manner acting with, but in opposition to said association of plaintiff with him, but on the contrary thereof refused to pay the same into the common fund of said association. That in order to enhance the wrong and injury resulting to plaintiffs from his acts, said Falconi and the said Black are, or plaintiffs believe are, engaged in soliciting persons to withdraw their patronage from said association and procure their vessels to be piloted to and from the sea by said lawless combination, which the said defendant has so recently joined, as aforesaid, and as your petitioners are informed offer to pilot vessels on pilotage grounds for less than the statute fees due therefor, or to make it the interest of masters of vessels to aid them by offering bribes and other

unlawful inducements to procure the loss of said pilotage and fees to your petitioners and to the said association, and if
365 possible break up the same and render it insolvent by the destruction of the profits thereof.

That said unlawful acts of the said defendant Falconi have caused the said association loss and damage exceeding the sum of twelve hundred dollars, and if continued will subject the said association, plaintiffs, to a loss exceeding the sum of twenty thousand dollars; that the said defendant refused to desist and threaten to continue his unlawful acts, and in violation of said agreement of association, and that he is not possessed of any considerable property, and your petitioner cannot recover or collect of or from him the amount of damage and loss which he has already caused, and still less the damage which he will cause them if he is permitted to continue his unlawful acts; that the said acts of said defendant, unless restrained by the mandate of this honorable court, will cause said plaintiff irreparable damage, from which they have no adequate remedy in law.

Wherefore the premises, and the annexed affidavit and bond considered, your petitioners pray that the said defendant
366 may be cited to answer this petition after due legal delay, and that the court allow and grant in this case a mandate of injunction, directed to the said defendant, George A. Falconi, commanding him that he in all things desist and refrain from the breach and non-observance of article seven of the said contract of association between him, the said defendant, George A. Falconi, and the said plaintiffs herein, a copy whereof is annexed to this petition as Exhibit "A," and from in any manner, directly or indirectly, giving for hire or gratuitously, or in any other manner, his time, skill, influence, attention and labor, or any part thereof, to any business of piloting vessels, or to any business of a like character to that set forth in said articles of associations, by him entered into with the said plaintiffs and the said Francis, except to said plaintiff under said agreement of association, a copy whereof is annexed to this petition as Exhibit "A," and for the benefit of said association, the branch pilots of the port of New Orleans, Louisiana, and not in opposition thereto, either
367 for his own account and interest or in conjunction in any manner with the said J. W. Black, or any other person or persons whatsoever, and that he in all things refrain and desist from doing or attempting to do any act of piloting or attempting to pilot vessels as a branch pilot of the port of New Orleans, except under the terms, conditions, rules, and regulations of said contract of association, and the by-laws made thereunder, and for the joint benefit of himself and associates named in said contract, and who are members of said association therein and whereby created, and from doing any act or acts whatsoever in violation

of the obligations binding on him in any ——— by the terms of said act of association as set forth in the petition, and that after due proceedings had the said injunction be made perpetual.

That the said contract of association, a copy of which is made a part of petition herein, and that it be decreed to be a lawful contract, and the said defendant, George A. Falconi, bound thereby be required to observe, obey, and fulfil the same
368 in all particulars, and that the said defendant be condemned to pay to the said plaintiffs, the branch pilots of the port of New Orleans, Louisiana, the full sum of twelve hundred dollars as damages already caused by his unlawful acts, up to the time of the commencement of this action, saving and reserving unto plaintiff their right of action for such other and further loss and damage which said defendant may cause to them by other and further acts of wrong in violation of the terms of contract of association set forth in this petition, and that he be condemned to pay all the costs of this action, and will ever pray.

(Signed) J. R. BECKWITH,
Att'y for Petitioners.

STATE OF LOUISIANA, *Parish of Orleans.*

Richard Francis, being first duly sworn, deposeth and saith that he is one of the plaintiffs named in the foregoing petition, and that he is the agent and attorney-in-fact of the other
369 plaintiffs, and of the branch pilots of the port of New Orleans, Louisiana, that he knows the contents of said foregoing petition, that the said petition is and the matters therein set forth are true as therein set forth, that the acts of the said defendant, George A. Falconi, have caused the plaintiffs irreparable injury, and unless restrained by the order and injunction of the court will continue to cause said plaintiff irreparable loss and injury, and that, according to deponent's belief, the said facts render an injunction necessary and indispensable to the protection of the rights of the plaintiffs in the premises, and further saith not.

(Signed) RICHARD FRANCIS.

Sworn to and subscribed before me, notary, on the 21st January, 1881.

(Signed) A. G. LA PICE, *Not. Pub.*

Order.

Let an injunction issue against the defendant, George A. Falconi, as prayed for in the plaintiff's petition, upon plaintiff's giving

bond with good and sufficient surety conditioned as the
370 law directs in the sum of three thousand dollars.
January 22nd, 1881.
(Sgd) N. H. RIGHTOR, *Judge.*

Bond.

Know all men by these present that we, Richard Francis, William T. Lavine, Charles W. Read, William F. Higgins, John McLaughlin, Joseph Smith, John Ervine, Robert M. Wilson, Asa A. Douglas, Charles Dennis, Philip Wurtez, Thomas D. Lewis, Daniel B. Morgan, Joseph Preble, Robert H. Tilford, Gustave Gersdorf, Francis Bailey, Oscar Schultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, William E. Pendleton, Harry Buttcher, Benjamin S. Ames, Peter Douham, Bernard Michel, Francis Long, Charles S. Clark, Edward C. Bannon, Francis Williams, Nathaniel L. Cloutman, Thomas Wilson, Robert T. Wilson, James W. Lyons, William B. Turley, and Joseph Redman, as principal, and Charles Prayer, of the city of New Orleans, as surety, are held firmly bound
371 unto George A. Falconi, his heirs, executors, and administrators, in the full sum of three thousand ($3,000) dollars, lawful money of the United States, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Signed, sealed, and delivered this 22d day of January, A. D. 1881, as witness our respective hands and seals.

(Signed) RICHARD FRANCIS.
(Signed) CHS. PRAYER.

The condition of the above obligation is such, that whereas the said above-named and bounden principals have this day presented a petition to the honorable civil district court for the parish of Orleans, praying a writ of injunction may issue to enjoin and restrain the said George Falconi, as prayed for in said petition. Now, if the above-bounden Richard Francis, William T. Lavine, Charles W. Read, William F. Higgins, John McLaughlin, Joseph Smith, John Ervine, Robert M. Wilson, Asa A. Douglass, Charles Dennis, Philip Wurtez, Thomas D. Lewis, Daniel B. Morgan, Joseph Preble, Robert H. Tilford, Gustave Gers-
372 dorf, Francis Bailey, Oscar Shultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, William E. Pendleton, Harry Buttcher, Benjamin S. Ames, Peter Douham, Bernard Michel, Francis Long, Charles S. Clark, Edward C. Bannon, Francis Williams, Nathaniel L. Cloutman, Thos. Wilson, Robert T. Wilson, James W. Lyons, William B. Turley, and Joseph Redman, shall well and truly pay to the said George A. Falconi, the defendant in said writ of injunction, all such

damages as he may recover against us in case it should be decided that the injunction was wrongfully obtained, or the said Charles Prayer shall pay and discharge the said damages in our stead, then and in that case the obligation shall be null and void, but otherwise in full force and effect.

Signed, sealed, and delivered in the presence of—

(Signed) J. W. WESTERFIELD.
(Signed) C. B. FARRE.
(Signed) RICHARD FRANCIS. [SEAL.]
Agent Pilots' Association and Attorney-in-fact.
(Signed) CHS. PRAYER. [SEAL.]

373 *Exhibit A,*

Annexed to Petition. Filed Jan'y 22d, 1881.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Be it known that on this, the twenty-seventh (27th) day of the month of May, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the one hundred and third, before me, Joseph A. Quintero, a notary public, duly commissioned and qualified in and for the parish of Orleans, State of Louisiana, domiciliated in the said parish, and in the presence of the witnesses hereinafter named and undersigned, personally appeared Richard Francis, Esq., of lawful age, and a resident of the parish of Plaquemines, in the State of Louisiana, but at the time of the execution of these presents temporarily present in this city of New Orleans, acting herein as the agent and attorney in fact of and for William T. Levine, Charles W. Read, William F. Higgins, John Mc-
374 Laughlin, George A. Falconi, Joseph Smith, John Ervine, Robert M. Wilson, Asa A. Douglas, Charles Dennis, Philip Wurtez, Thomas D. Lewis, Daniel B. Morgan, Joseph Preble, Robert H. Tilford, Gustave Gersdorf, Francis Bailey, Oscar Schultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, William E. Pendleton, Harry Buttcher, Benjamin S. Ames, Peter Douham, Bernard Michel, Francis Lory, Charles S. Clark, Edward C. Bannon, Francis Williams, Nathaniel L. Cloutman, Thomas Wilson, Robert T. Wilson, James W. Lyons, William B. Turley, and *William* Redman, all of whom are of lawful age and residents of the said parish of Plaquemines, in the State aforesaid, as such constituted under a power of attorney executed on the 20th day of May, 1879, duly acknowledged before me, notary, on the 24th day of May, 1879, and hereto annexed for reference, which said appears, acting in his said capacity, declared that by virtue of the

power and authority vested in him as agent and attorney
375 in fact aforesaid, he does by these presents enter into and form his said constituents into a partnership for the objects and purposes hereinafter expressed and set forth, said partnership to be governed and regulated by the following articles, to wit:

Article First.

The said partnership shall be known and designated as the Branch Pilots of the Port of New Orleans, Louisiana, and its domicile is hereby fixed and established at the said city of New Orleans, in the State of Louisiana.

Article Second.

The objects and purposes of the said partnership shall be to mutually protect the common interest of the said partners thereto in the pursuance of their profession as branch pilots of the port of New Orleans, in the State of Louisiana.

Article Third.

The business of said partnership shall be a general piloting business, to be exercised principally in the piloting of ships, steamships, schooners, brigs, and vessels of all descriptions
376 over the bar and through the various passes at the mouth of the Mississippi river, and whether said vessels be returning from or going to sea, and generally any and every other thing to said business properly belonging or appertaining.

Article Fourth.

The said partnership shall begin and commence on and after the first day of June, in the year eighteen hundred and seventy-nine, and shall continue and exist for the space and term of twenty years from that date, unless sooner dissolved in the manner hereinafter provided for.

Article Fifth.

The capital stock of the said partnership is hereby fixed at the sum of sixty-three thousand ($63,000) dollars, consisting of certain vessels which have been purchased for the purposes of this partnership by the respective members thereof, and herein contributed by them respectively to form the capital stock of this partnership, and which said vessels, contributed as aforesaid, have, for the purposes of this act, been mutually valued
377 and appraised as follows, to wit:

1st.	Jennie Wilson,	valued at	$22,000
2d.	Haze,	"	10,000
3d.	Nellie,	"	7,000
4th.	Ella,	"	5,000
5th.	Charles Morgan,	"	7,000
9th.	Oriental, (sold)	"	6,000
7th.	Sam Houston,	"	2,400
8th.	Sylph, (sold)	"	1,000
9th.	General Jackson, (sold)	"	1,800
10th.	Lone Star, (sold)	"	800
	Total		$63,000

Which said capital stock is divided into as many contributions as there are members of this partnership, viz., thirty-eight, so as to make the contributions of stock of each partner equal and uniform, and in dollars and cents amount to the sum of one thousand six hundred and fifty-seven dollars and eighty nine and one-half cents, ($1,687.89½,) and which said capital stock, divided as above set forth, has been contributed by said partners in the manner following, to wit: the said Robert M. Wilson, Thomas Wilson, John McLaughlin, John F. Gersdorf, Thomas Craig, and Francis Lory, and Joseph Red-
378 man have contributed their proportion and share of said capital stock, viz., the said sum of one thousand six hundred and fifty-seven dollars and eighty-nine and one-half cents (1,657.89½) each in cash, current money of the United States, the receipt whereof by said agent is hereby acknowledged, and full acquittance therefor granted; said Francis Bayley, in part payment of his share of said capital stock, has contributed cash, in said current money of the United States, at and before the execution of these presents, the full sum of one thousand and forty-three $\frac{57}{100}$ dollars, ($1,043.57,) and for the balance has issued his note for the sum of six hundred and fourteen 32½-100 dollars, ($614.32½;) said William T. Levine, Joseph Preble, Nathaniel L. Cloutman, Francis Williams, William F. Higgins, and Robert H. Tilford, in part payment of their share of said capital stock, have contributed each in cash, current money of the United States, at and before the execution of these presents, the full sum of eight hundred and thirty-three 33⅓-100 dollars,($833.33⅓,) and for
379 the balance have issued their separate notes each for the sum of eight hundred and twenty-four 56⅓-100 dollars,($824.56⅓;) said James W. Lyons, Asa A. Douglas, Thomas D. Lewis, Walter Jarvis, and Thomas Craig, in part payment of their share of said capital stock, have contributed each in cash, current money of the United States, at and before the execution of these presents, the full sum of one thousand one hundred and sixty-

six —— —— and two-third cents, ($1,166.66⅔,) and for the balance of said stock have issued their separate notes each for the sum of four hundred and ninety-one dollars and twenty-two and one-third cents ($491.22⅓;) said Henry Buttcher, Peter Douham, Joseph Smith, Philip Wuertz, and Oscar Schultz, in part payment of their share of said capital stock, have contributed each in part payment in cash, current money of the United States, at and before the execution of these presents, the full sum of twelve hundred dollars ($1,200.00,) and for the balance have made and issued their separate notes each for the sum of four hundred and fifty-seven dollars and eighty-nine and one-half
380 cents ($457.89½;) said Charles Dennis, Daniel B. Morgan, and Gustave Gersdorf, in part payment of their share of said capital stock, have contributed each, cash, in current money of the United States, at and before the execution of these presents, the full sum of eight hundred dollars, ($800.00,) and for the balance have issued their separate notes, each, for the sum of eight hundred and fifty-seven dollars and eighty-nine and one-half cents ($857.89½;) said Benjamin S. Ames, in part payment of his share of said capital stock, has contributed in cash, current money of the United States, at and before the execution of these presents, the full sum of one thousand dollars, ($1,000,) and for the balance has issued his note for the sum of six hundred and fifty-seven dollars and eighty-nine and one-half cents, ($657.89½;) said Robert T. Wilson, in part payment of his share of said capital stock, has contributed in cash, money of the United States, at and before the execution of these presents, the
381 full sum of eight hundred dollars, ($800.00,) and for the balance has issued his note for the sum of eight hundred and fifty-seven dollars and eighty-nine and one-half cents, ($857.89½;) and said Charles W. Read, George A. Falconi, John Ervine, Edward Breen, John Ahern, William E. Pendleton, Bernard Michel, Charles S. Clark, and Edward C. Bannon, and William B. Turley, in payment of their respective shares of said capital stock, have issued their separate notes, each, for the sum of one thousand six hundred and fifty-seven dollars and eighty-nine and one-half cents, ($1,657.89½.) All of which said notes, as herein respectively issued, have been drawn by said Richard Francis as agent of said parties respectively, and are all dated at this city of New Orleans of even date herewith, payable each in one year after date, bearing eight per cent. per annum interest from maturity until paid, and have been officially paraphed by me, notary, for identification herewith, and then delivered to said Richard Francis, who, as hereinafter provided for, is constituted the general agent and manager of said
382 partnership, and who hereby acknowledges the receipt thereof, as of said cash money herein contributed above set

forth, and grants full acquittance and discharge therefor. And the contribution of each partner is to remain intact during the continuance of this partnership.

Article Sixth.

The respective interest and liability of each partner, as between themselves in and to the profits and losses of this partnership, shall be equal and uniform, and shall be borne and partaken of by each partner, share and share alike.

Article Seventh.

In addition to the capital contributed, each partner shall bring to the business of their said firm all of his time, skill, influence, attention, and labor, and no partner shall have the right to enter into or carry on any business of a like nature with the business of this partnership, whether for his own account or in conjunction with others, said partners being bound to the provisions of this article in the penal sum of five thousand dollars and
383 forfeiture of all right, title, and interest in this partnership.

Article Eighth.

Proper and customary books of accounts of the business of this partnership showing exact and just entries of all business transactions, all stock in trade, all profits and losses, and all debts and credits of each partner; to which books of accounts each partner shall at all times, either individually or by any duly authorized representative, have free and easy access. Twice a year, or oftener if agreed upon, an account of stock shall be taken; books shall be properly balanced, profits and loss declared, and the same carried to the debit or credit of each partner, as the case may be.

Article Ninth.

One-half of all the net profits of this partnership due to any member thereof who shall not have paid his contribution of stock in cash and who shall have given notes in payment or part payment thereof, shall be reserved by this partnership and credit given such partners on the back of said notes accord-
384 ingly—reserving, however, to each partner the right to take up and pay such notes before the maturity thereof; and in case one-half of said net profits, reserved as aforesaid, shall prove insufficient to cancel and extinguish the indebtedness evidenced by said notes, then this partnership binds itself to renew the same until such time as said profits shall have cancelled and extinguished the same. All other net profits of this partnership shall be divided monthly among the members thereof.

Article Tenth.

Said Richard Francis is hereby made the general agent and manager of said partnership, and empowered to transact and manage the office business of the same, receive and accept service of all citations and other legal proceedings, to sue and be sued, and stand judgment for or against this partnership, and employ, discharge, and pay counsel. For the faithful performance of his duties he shall receive an annual salary of five thou-
sand dollars, ($5,000.00,) payable monthly, to be secured
385 by mortgage to be forthwith executed by this partnership, and shall execute a bond, with good and sufficient security, at the same time that said mortgage shall be granted to him, said bond to be for the sum of ten thousand dollars, ($10,000.00,) and to be conditioned upon the faithful performance of the duties of his office.

Article Eleventh.

The said partnership shall have the right to establish such rules, regulations, and by-laws for the observance and performance of these articles of partnership as they may deem fit and proper, providing the same do not conflict with the provisions of this act and are not contrary to law.

Article Twelfth.

In case of the death of any member of this partnership, his heirs or legal representatives shall be settled with in full, and the partnership continued and conducted for account of the surviving partners; and in making said settlement consideration shall
be given to the value of said capital stock at the time of said
386 decease, and the individual account of such deceased members with said partnership.

This done and passed, at my office in this city of New Orleans, in the presence of Frederick Zengel and William R. Richardson, witnesses of lawful age and domiciliated in this city of New Orleans, who sign these presents with said appeared and me, notary, on the day and date aforesaid.

(Original signed)	Richard Francis, Agent.
"	F. Bailey.
"	Charles Dennis.
"	Thomas Wilson.
"	Chas. S. Clark.
"	W. B. Turley.
"	Robert T. Wilson.
"	Francis Lory.
"	Wm. E. Pendleton.
"	A. A. Douglas.

(Original signed) Robt. M. Wilson.
" Fred. Zengel.
" Wm. R. Richardson.
" Joseph A. Quintero,
Notary Public.

I do hereby certify that the above and foregoing is a true
387 and correct copy of the original act of partnership now on file and of record in my notarial office.

In witness whereof, I have hereunto set my official signature and seal at my office, in this city of New Orleans, this 30th day of May, A. D. 1879.

(Signed) JOSEPH A. QUINTERO, *Not. Pub.*

Writ of Injunction. Issued January 22nd, 1881.

Civil Dist. Court.

RICHARD FRANCIS *et al.*
vs.
GEORGE A. FALCONI. } No. 2142.

State of Louisiana, Civil District Court for the Parish of Orleans.

The State of Louisiana to George A. Falconi, of New Orleans, Greeting:

You are hereby commanded, enjoined, and restrained, in the name of the State of Louisiana, and of the civil district court for the parish of Orleans, in all things desist and refrain
388 from the breach and non-observance of article seven of the contract of association between you and the plaintiffs herein, and from in any manner, directly or indirectly, giving for hire or gratuitously, or in any other manner, your time, skill, influence, attention, and labor, or any part thereof, to any business of piloting vessels, or to any business of a like character to that set forth in said articles of association, by you entered into with the said plaintiffs and the said Francis, except to said plaintiffs under said agreement of association, and for the benefit of said association the branch pilots of the port of New Orleans, Louisiana, and not in opposition thereto, either for your own account and interest or in conjunction in any manner with J. W. Black or any other person or persons whatsoever, and that you are in all things to refrain and desist from doing or attempting to do any act of piloting, or attempting to pilot, vessels as a branch pilot of the port of New Orleans, except under the terms, conditions, rules and regulations of the said contract of association
389 and the by-laws made thereunder, and for the joint benefit of yourself and your associates, named in said contract, and who are members of said association therein and thereof

created, any from doing any act or acts whatsoever in violation of the obligations binding on you in and by the terms of said act of association, as set forth in the petition.

And you are so to remain enjoined and restrained until the further orders of this court.

Witness the Honorables A. T. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges of our said court, this 22nd day of January, in the year of our Lord one Lord one thousand eight hundred and eighty-one, and in the one hundred and fifth year of the Independence of the United States.

(Signed) E. A. LUMANAIS,
D'y Clerk.

Sheriff's Return.

Received January 22nd, 1881, and on the 22nd day of
390 January, 1881, I served a copy of the within writ of injunction and copy on George A. Falconi, defendant herein, by leaving the same at his domicile, No. 45½ Washington street, in the hands of Mrs. Falconi, his wife, a person apparently over the age of 14 years, living and residing in said domicile, whose name and other facts connected with this service I learned by interrogating her, Mrs. Falconi, the said defendant herein, being absent from his domicile at time of said service.

Sh'ff fee, $2.50.

Returned same day.

(S'g'd) H. FEEHAN, *D'y Sh'ff.*

Motion and Order to Bond. Filed January 25th, 1881.

Extract from the Minutes of Division "B," of 25th January, 1881.

RICHARD FRANCIS *et al.*
vs.
GEORGE A. FALCONI. } No. 2142.

On motion of E. Howard McCaleb and Brice and Pardee, att'ys for defendant, and on showing to the court that acts
391 therein enjoined are not such as may work an irreparable injury, and that by art. 307, Code of Practice, defendant is entitled to have said injunction dissolved on bond..

It is ordered, that the writ of injunction herein issued be set aside and dissolved on defendant executing his obligation in favor of the plaintiffs, with the surety of one good and solvent person, residing within the jurisdiction of this court, in the sum of five thousand dollars, conditioned as the law directs.

Rule Submitted.

Extract from the Minutes of Division "B," Friday, January 25th, 1881.

Present: Hon. W. T. Houston, judge.

RICHARD FRANCIS *et al.* } No. 2142.
vs. } C. D. C.
GEORGE A. FALCONI. }

The rule to dissolve the injunction issued herein, and the application for [—] to bond filed this day, came up for trial.

Present: Hon. E. H. McCaleb, and Brice and Pardee,
392 for plaintiff in rule; J. R. Beckwith, for defendant in rule.

When, after hearing pleadings and argument of counsel, said matters being submitted, the court took the same under advisement.

Judgment on Rule.

Extract from the Minutes of Division "B," Wednesday, January 26th, 1881.

Present: Hon. W. T. Houston, judge.

RICHARD FRANCIS *et al.* } No. 2142.
vs. } C. D. C.
GEORGE A. FALCONI. }

For the reasons orally assigned this day, the court, considering the law to be with defendants in rule—

It is ordered that the rule herein taken on the 25th day of January, and submitted same day for adjudication, be now made absolute, and accordingly that the writ of injunction herein issued, be set aside and dissolved on defendant, George A. Falconi, executing his obligation in favor of the plaintiffs, Richard
393 Francis et als., with the surety of one good solvent person within the jurisdiction of the court in the sum of five thousand dollars, conditioned as the law directs.

Motion of Appeal. Filed January 26th, 1881.

RICHARD FRANCIS *et al.* } No. 2142.
vs. } C. D. C.
GEO. A. FALCONI. }

On motion of J. R. Beckwith, attorney for the plaintiffs herein, and on suggesting to the court that the plaintiffs feel aggrieved by the interlocutory order made in this cause on the 26th day of January, 1881, dissolving the writ of injunction issued in this cause

upon the defendants giving bond in the sum fixed by said order, as ——— said order in this court, and that said order will cause said plaintiffs irreparable injury if continued in force and effect, and that said interlocutory judgment will cause said plaintiffs irreparable injury, and that said plaintiffs desire to appeal from said judgment and order of this hon. court to the supreme
394 court, it is ordered that the said plaintiffs be and are hereby allowed and granted a suspensive appeal from said order and judgment dissolving said injunction, upon the defendants giving bond as stated in said order, and that the said appeal be suspensive upon the plaintiffs giving bond in the sum of five hundred dollars, conditioned as the law directs, and that said appeal be made returnable in the supreme court of this State on the 1st Monday of February, 1881.

This return day being fixed by the court.

Bond of Appeal. Filed January 27th, 1881.

Know all men by these presents that we, Richard Francis, William T. Lavine, Charles W. Reed, William F. Higgins, John McLaughlin, Joseph Smith, John Ervine, Robert M. Wilson, Asa A. Douglas, Charles Dennis, Philip Wurtz, Thomas D. Lewis, Daniel B. Morgan, Joseph Preble, Robert H. Tilford, Gustave Gersdorf, Frank Bailey, Oscar Shultz, Walter Jarvis,
395 Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, William E. Pendleton, Henry Buttcher, Benjamin S. Ames, Peter Douham, Bernard Michel, Francis Lory, Charles S. Clark, Edward C. Bannon, Francis Williams, Nathaniel L. Cloutman, Thomas Wilson, Robert T. Wilson, James W. Lyons, William B. Turley, and Joseph Redmon as principals, and John W. Westerfield, of the city of New Orleans, as surety, are held and firmly bound unto James T. Clark, clerk of the civil district court for the parish of Orleans, his successors, administrators, executors, and assigns, in the sum of five hundred dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators firmly by these presents. Sealed with our seals and dated in the city of New Orleans on this twenty-seventh day of January, in the year of our Lord one thousand eight hundred and eighty-one.

Whereas the above bounden, Richard Francis, William T. Lavine, Charles W. Reed, William F. Higgins, John McLaughlin, Joseph Smith, John Ervine, Robert M. Wilson, Asa A. Douglas, Charles Dennis, Philip Wurtz, Thomas D. Lewis, Daniel
396 B. Morgan, Joseph Preble, Robert H. Tilford, Gustave Gersdorf, Frank Bailey, Oscar Shultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, William E. Pendleton, Henry Buttcher, Benjamin Ames, Peter

Douham, Bernard Michel, Francis Lory, Charles S. Clark, Edward C. Bannon, Francis Williams, Nathaniel L. Cloutman, Thomas Wilson, Robert T. Wilson, James W. Lyons, William B. Turley, and Joseph Redman have this day filed a motion for suspensive appeal, from an interlocutory judgment rendered against them in the suit of Richard Francis, William T. Lavine, Charles W. Read, William F. Higgins, John McLaughlin, Joseph Smith, John Ervine, Robert M. Wilson, Asa A. Douglas, Charles Dennis, Philip Wurtz, Thomas D. Lewis, Daniel B. Morgan, Joseph Preble, Robert H. Tilford, Gustave Gersdorf, Frank Bailey, Oscar Shultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, William E. Pendleton,
Henry Buttcher, Benjamin [Ames,] Peter Douham, Ber-
397 nard Michel, *Thomas* Lory, Charles S. Clark, Edward
C. Bannon, Thomas Williams, Nathaniel L. Cloutman, Thomas Wilson, Robert T. Wilson, James W. Lyons, William B. Turley, and Joseph Redman *vs.* George A. Falconi, No. 2142 of the docket of the civil district court for the parish of Orleans on the 26th day of January, 1881, and entered on the said last mentioned day, as appears by the record of said order and judgment and appeal in said court.

Now the conditions of the above obligation is such that the above bounden Richard Francis, William T. Lavine, Charles W. Reed, William F. Higgins, John McLaughlin, Joseph Smith, John Ervine, Robert M. Wilson, Asa A. Douglas, Charles Dennis, Philip Wurtz, Thomas D. Lewis, Daniel B. Morgan, Joseph Preble, Robert H. Tilford, Gustave Gersdorf, Frank Bailey, Oscar Shultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, William E. Pendleton, Henry Buttcher, Benjamin S. Ames, Peter Douham, Bernard Michel,
Francis Lory, Charles S. Clark, Edward C. Bannon, Fran-
398 cis Williams, Nathaniel L. Cloutman, Thomas Wilson,
James W. Lyons, William B. Turley, and Joseph Redman, shall prosecute their said appeal, and shall satisfy whatsoever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they are cast in the appeal, otherwise that the said John W. Westerfield, surety, shall be liable in their place and stead. Signed, sealed, and delivered on the 26th day of January, A. D. 1881.

(Signed) RICHARD FRANCIS, [SEAL.]
For himself and as attorney-in-fact for the other principals, the plaintiffs.
(Signed) J. W. WESTERFIELD.

Witness:
(Sgd) J. R. BECKWITH.

Stipulations. Filed March 9th, 1881.

Civil D't C't.

RICHARD FRANCIS *et als.*, Pilots' Association,
vs.
GEORGE A. FALCONI. } No. 2142.

399 I do hereby agree and stipulate that there be final judgment in this cause, and that the writ of injunction allowed in this cause be made final and perpetual, and that there be no judgment for damages, and that such judgment may be entered and signed at once on filing this stipulations.

(Signed) GEORGE A. FALCONI.

STATE OF LOUISIANA, *Parish of Orleans.*

J. R. Beckwith, being first duly sworn, deposeth and saith, that he knows Geo. A. Falconi, whose name is signed to the above stipulation, that he has seen him write, and that the name signed to the above stipulations is the genuine signature of the said George A. Falconi.

(S'g'd) J. R. BECKWITH.

Sworn and subscribed before me, this 9th day of March, 1881.

(S'g'd) P. J. SULLIVAN, *D'y Cl'k.*

Judgment. Returned Mch. 9th, 1881.

400 Extract from the Minutes of Division "B," Wednesday, March 9th, 1881. Present, Hon. W. T. Houston, Judge.

RICHARD FRANCIS *et als.*
vs.
GEORGE A. FALCONI. } No. 2142. C. D. C.

In this case submitted to the court for adjudication upon the agreement and stipulations on file, and the affidavit annexed thereto:

It is ordered, adjudged, and decreed that the injunction therein issued be made perpetual, and that accordingly the contract of association, a copy of which is made a part of the petition herein and marked Exhibit "A," be decreed to be a lawful contract, and the said defendant, George A. Falconi, bound thereby, be required to observe, obey, and fulfill the same in all particulars. It is further ordered that the defendant pay costs of these proceedings.

Judgment rendered and signed March 9th, 1881.

(Signed) W. T. HOUSTON, *Judge.*

401 *Certificate.*

I, James T. Clark, clerk of the civil district court for the parish of Orleans, do hereby certify the foregoing fifty-two pages do contain a true and correct transcript of all the proceedings had, documents filed, testimony and evidence adduced in the cause entitled Richard Francis et als. vs. George Falconi, instituted and prosecuted in this court under the No. 2142 of the docket.

In testimony whereof, I have hereunto set my hand and affixed the impress of this court on this seventeenth day of January, 1882, and in the 106th year of the Independence of the United States of America.

[SEAL.] (Signed) JAS. T. CLARK, *Clerk.*

402 *Copy of Enrollment of Steam Tug Mary Lee.*

Offered in evidence by the defendants February 1st, 1883.

Permanent. Certificate No.		Official number.
39.	(Certified Copy.)	Numerals. Letters. 91034.

THE UNITED STATES OF AMERICA.

Sec. 4319, Rev. Stats., Catalogue No. 538.

Certificate of Enrollment.

Enrollment: In conformity to title L, "Regulation of Vessels in Domestic Commerce," of the Revised Statutes of the United States,* John W. Black, of New Orleans, La., having taken and subscribed the oath required by law, and having sworn that he, † owning $\frac{1}{8}$, together with James M. Flinn, of same place, $\frac{1}{8}$, are citizens of the United States, and sole owners of the ship or vessel called the Mary Lee, of New Orleans, whereof T. C. Pendleton is at present master, and as he hath sworn is a citizen of the United States, and that the said ship or vessel was built at Philadelphia, Penn., in the year 1877, as appears by ‡ enrollment No. 145, temporary, issued at the port of Philadelphia, October 23rd, 1877, surrendered arrival at home port, and enrollment
403 No. 145 having certified that the said ship or vessel has one deck and one mast, and that her length is 97 and $\frac{7}{10}$ feet, her breadth 21 and $\frac{8}{10}$ feet, her depth 10 feet, her height — feet, that she measures one hundred seventeen and $\frac{62}{100}$ths tons, viz:

	Tons.	100ths.
Capacity under tonnage deck	110	83
Capacity between decks above tonnage deck	———	———
Capacity of inclosures on the upper deck, viz	6	79
Total tonnage	———	———

that the following described spaces, and no others, have been omitted, viz.: ————————, and that she is a § steam propeller, has a stem head and a round stern, and || the said John W. Black having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said title, the said ship or vessel has been enrolled at the port of ————————.

Given under my hand and seal at the port of New Orleans, in the district of New Orleans, this 3rd day of November, in the year one thousand eight hundred and seventy-seven.

(Signed) T. V. COUPLAND, [SEAL.]
D'y Collector of Customs.

[SEAL.] (S'g'd) LOUIS M. KENNER,
D'y Naval Officer.

* Insert here the name of the person, with his occupation and place of abode, by whom the oath or affirmation is to be made.

† If more than one owner, insert the words "together with," and the name or names, occupation or occupations, place or places of abode of the owner or owners, and the part or 404 proportion of vessel belonging to each owner.

‡ Here describe previous document.

§ Insert here the particular kind of vessel, whether ship, brigantine, snow, schooner, sloop, or whatever else.

|| In every *original* enrollment insert the following: "The said ———————— having agreed to the description and measurement above specified, and."

Endorsement.

(Cat. No. 538.) Certified copy. Certificate of enrollment No. 39 of the steam propeller called the Mary Lee, 117$\frac{6}{100}$ tons, issued at the port of New Orleans, district of New Orleans, November 3, 1877. ————————, ——— of customs. Seal.

DISTRICT AND PORT OF NEW ORLEANS,
COLLECTOR'S OFFICE, *Feb'y* 17, 1882.

I hereby certify the foregoing to be a true copy of the record on file at this office.

[SEAL.] (Signed) J. D. CRAWFORD, *D'y Collector.*

405 *Copy of License of Steam Tug Mary Lee.*

Offered in Evidence by Defendants, February 1st, 1882.

License No.	(Cat. No. 541.)	Permanent. Official number.
93.	Certified Copy.	Numerals. | Letters. 91034.

THE UNITED STATES OF AMERICA.

License of Vessel of Twenty Tons, or upwards, to carry on the * Coasting Trade for one year.

District of New Orleans, Port of New Orleans.

In pursuance of Title L, "Regulation of Vessels in Domestic Commerce," of the Revised Statutes of the United States, † John W. Black, of New Orleans, La., and George A. Sheldon, having given bond, that the steam propeller called the Mary Lee, whereof the said Sheldon is master, burden 117 tons and 62 hundredths, as appears by her enrollment, issued at this port, numbered 39, and dated ‡ New Orleans, November third, eighteen hundred and seventy-seven, shall not be employed in any trade while this license shall continue in force, whereby the revenue of the United States shall be defrauded; and having also § sworn that this license shall not be used for any other vessel, or for any other employment, than is herein specified. License is hereby
406 granted for the said steam propeller called the Mary Lee, of New Orleans, to be employed in carrying on the * coasting trade for one year, from the date hereof, and no longer.

Given under my hand and seal, at the port of New Orleans, in the district of New Orleans, this tenth (10th) day of December, in the year one thousand eight hundred and eighty.

[SEAL.] (Signed) LOUIS M. KENNER,
D'y Naval Officer.

[SEAL.] (Signed) J. D. CRAWFORD,
D. Collector of Customs.

* Insert "Coasting Trade," "Whale fishery," "Mackerel fishery," or, "Cod fishery," as the case may be.

† Insert the name of the husband, or managing owner, with his occupation and place of abode, and the name of the master with the place of his abode.

‡ Insert name of district, day, month, and year, in words at length.

§ "Sworn" or "affirmed," as the case may be.

Indorsements of change of master: District of New Orleans, port of New Orleans, Oct. 5th, 1881, Harvey P. McNeely, having

taken the oath required by law, is at present master of the within named vessel, in lieu of Geo. A. Sheldon, late master.

(Signed) J. D. CRAWFORD,
D'y Coll. of Customs.

407 Indorsement: Cat. No. 541. (Certified copy.) License of vessel of 20 tons or upwards. License No. 93 of the S. S. Mary Lee, Off. No. 91034, $117\frac{62}{100}$ tons. Issued at the port of New Orleans, district of New Orleans, December 10th, 1880.

Date of surrender—Jan'y 4, 1882.

Where surrendered—New Orleans.

Cause of surrender—Renewal P. Lic. No. 107, issued Jan'y 4, 1882.

(Signed) A. S. BADGER,
Collector of Customs.

DISTRICT AND PORT OF NEW ORLEANS,
COLLECTOR'S OFFICE, *Feb'y* 17, 1882.

I hereby certify the foregoing to be a true copy of the original on file at this office.

(Signed) J. D. CRAWFORD,
D'y Collector.

The affidavit of J. W. Black, subscribed and sworn to on June 16th, 1881, in presence of J. W. Gurley, master, and offered in evidence by defendants, February 1st, 1882, is already transcribed on page 79 of this transcript.

The attested copy of the act passed before Joseph A. Quintero, notary public, on May 27th, 1879, being the articles of
408 association partnership of the defendants, filed in the record as Exhibit "A" to the affidavit of Richard Francis, offered in evidence by defendants, February 1st, 1882, is already transcribed on page 43 of this transcript.

The power of attorney constituting Richard Francis, the attorney-in-fact of the persons subscribing thereto, executed at Pilot Town on May 20th, 1879, offered in evidence by defendants February 1st, 1882, is already transcribed on page 49 of this transcript.

The ratification of the act of Richard Francis, the execution of which is sworn to by John W. Westerfield, before Joseph A. Quintero, notary public, on June 7th, 1879, with attached certificates, offered in evidence by defendants February 1st, 1882, is already transcribed on page 53 of this transcript.

Motion and Order for Publication of Testimony. Filed November 18th, 1882.

409 Circuit Court of the United States, Eastern District of Louisiana.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et al.* } In Equity. No. 9282.

On motion of J. R. Beckwith, sol. for defendants, and on suggesting to the court that the period for taking depositions in this cause has long since terminated, and that depositions and proofs have been taken in the cause,

It is ordered, that there be publication of the proofs and depositions, and that this cause be fixed for hearing on Monday, December 11th, 1882, at 11 o'clock a. m., and that the complainant's solicitors be notified thereof.

Notice to Complainant's Solicitors. Issued Nov. 18th, 1882.

Circuit Court of the United States for the Fifth Judicial Circuit and Eastern District of Louisiana.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et als.* } No. 9282.

You are hereby notified that this case is assigned for
410 trial for Monday, the 11th day of December, A. D. 1882, at 11 o'clock a. m.

By order of court:

Witness my hand and seal of the said court at New Orleans, this 18th day of Nov'r, A. D. 1882.

(Signed) T. V. COUPLAND, *D'y Clerk.*

To A. G. PRICE, Esq.
J. P. HORNOR & BAKER.

Marshal's Return.

Received Nov. 20, 1882, by the U. S. marshal, and on the same day, month, and year I served true copies of the within notices of trial on the herein named persons in the following manner:

A. G. Brice, Esq., personally in the city of New Orleans; Hornor and Baker, Esqs., left at office, No. 16 Carondelet St., with M. Breeden, clerk in the city of New Orleans.

Nov. 21, '82.

(Signed) J. DEVONSHIRE, *D'y Marshal.*

Order—Continuance of Case.

411 Extract from the Minutes of Monday, December 11th, 1882.
November term, 1882.

Present: Hon. E. C. Billings, district judge.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et al.* } No. 9282.

Considering the consent of the counsel herein, it is ordered that the cause go over till Tuesday, January 9th, 1883, at 11 o'clock, a. m.

Complainants' Note of Evidence. Filed January 9th, 1883.

United States Circuit Court.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et al.* } No. 9282.

Offerings of evidence for complainants:

1st. Record of case R. W. Francis *vs.* J. W. Black, No. 9111 of this court.

2d. George Osgood *vs.* J. W. Black *et al.*, civil district court.

3d. State ex rel. Attorney General *vs.* Hiram Follett, civil district court.

4th. State ex rel. *vs.* Pliny Cox, civil district court.

5th. Board of Administrators C. Hospital *vs.* Capt. H.
412 Geston & Co., civil district court.

6th. Richard Francis *et al. vs.* Geo. A. Falconi, No. 2142, civil district court.

7th. Act of partnership between the branch pilots, before J. A. Quintero, N. P., May 27, '79.

8th. Map of the jetties.

9th. Pilot's license of Capt. Glavy.

10th. Deposition of James M. Flinn and accompanying documents.

11th. Deposition of C. Donavan and accompanying documents.

12th. " " Robert Wilson " "

13th. " " Bernard Michel " "

14th. " " G. W. Adams " "

15th. " " Wm. H. Leppert " "

16th. " " S. R. Ulmer " "

17th. " " John Connor " "

18th. " " William H. Huer " "

19th. " " Geo. A. Sheldon " "

20th. Exhibit "D." Receipt of Falconi for $100.00 from Sheldon.

21st. Exhibit B. Order of chief engineers revoking order, &c., dated July 10, '81.

22d. Exhibit "A." Order of Secretary of War, dated Sept. 5, '81.

413 Record of case of Richard Francis *et als. vs.* John W. Black, No. 9111 of the docket of this court, offered in evidence by complainants, Sanuary 9th, 1883, and mentioned as No. 1 in the foregoing note of evidence.

Circuit Court of the United States, District of Louisiana.

RICHARD FRANCIS *et als.* *vs.* JOHN W. BLACK. } No. 9111.

Bill of Complaint and Order. Filed May 7th, 1880.

To the Honorable the Judges of the Circuit Court of the United States for the Fifth Circuit and District of Louisiana:

Richard Francis, a resident of New Orleans, in the State of Louisiana, and a citizen of said State, and William T. Levine, Charles W. Read, William F. Higgins, John McLaughlin,
414 George A. Falconi, Joseph Smith, John Ervine, Robert M. Wilson, Asa A. Douglas, Charles Dennis, Philip Wuertz, Thomas D. Lewis, Daniel B. Morgan, Joseph Preble, Robert N. Tilford, Gustave Gersdorf, Francis Bailey, Oscar Schultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, William E. Pendleton, Harry Buttcher, Benjamin S. Ames, Peter Douhan, Bernard Michell, Francis Long, Charles S. Clark, Edward C. Bannon, Francis Williams, Nathaniel L. Cloutman, Thomas Wilson, Robert T. Wilson, James W. Lyons, William B. Turley, Joseph Redman, George W. Cloutman, George Benson, Hugh Neil, and George Osgood, all residents and citizens of the State of Louisiana, appearing herein by their duly authorized agent and attorney-in-fact, the hereinbefore-named Richard Francis, bring this, their bill of complaint, against John W. Black, a resident of the city of New Orleans, in the State of Louisiana, and a citizen of said State.

And thereupon your orators complain and say that they are duly licensed branch pilots of the port of New Orleans,
415 and that for the furtherance of their interests they have formed themselves into a private association, under the name and style of "The Branch Pilots of the Port of New Orleans, Louisiana," said association being formed by authority of section 2707 of the revised statutes of the State of Louisiana;

that they bring this suit for the benefit of themselves and of such other of the branch pilots of said port as may choose to join herein with them and share in the costs of this prosecution.

And your orators show further they have spent many years in acquiring the knowledge and skill requisite for the proper performance of their duties as branch pilots; that they have established their homes for the special purpose of being always at the post where their services are required, and have many of them established dwellings at much expense at the passes at the mouths of the Mississippi river, and have also invested a considerable part or all of their savings in the purchase or building of pilot boats and the equipments required by law or necessary for pilots in the performance of their duties, and they are dependent
416 for their livelihood and that of their families upon the earnings derived from the exercise of their profession.

And your orators further complain and say that by section 2706 of the revised statutes of Louisiana it is provided that all vessels, inward or outward bound, to or from the port of New Orleans, except vessels of one hundred tons and under from Louisiana, Texas, Alabama, and Florida, refusing to take a branch pilot when one offers, shall be liable to the branch pilot thus offering for half pilotage, recoverable with privilege on said vessel before any court of competent jurisdiction; and by section 2702 of said revised statutes it is provided that the branch pilots of the port of New Orleans shall each be owner or part owner of at least one decked pilot boat of not less than fifty tons burden, and shall keep such boat exclusively employed as a pilot boat under penalty of suspension from his office; and by section 2703 of said revised statutes it is further provided that the pilots of the port of New Orleans shall be entitled to ask and receive
417 pilotage at the rate of three dollars and fifty cents for every foot drawn by any ship or vessel piloted by them drawing ten feet or less, and four dollars and fifty cents for all vessels over ten and up to eighteen feet of water, and that vessels drawing over eighteen feet of water shall pay the same rates as vessels drawing eighteen feet and no more, certain vessels from Louisiana, Texas, Alabama, and Florida excepted, as hereinbefore stated; and by act No. 99 of the Legislature of Louisiana, entitled "An act to regulate the system of pilotage of the ports of the State, to define the qualifications of pilots, and to define the duties of the board of examiners and to provide for the appointment of pilots," approved April 10, 1880, it was, among other things, provided that no person should thereafter be appointed a pilot for the entrance of the Mississippi unless he shall actually have served in a pilot boat at the mouth of the Mississippi river for the space of at least twelve months next preceding the date of his application,
418 and such pilot in order to entitle to act as such shall have

given bond, with two sufficient sureties, residents of New Orleans, in the sum of two thousand dollars; and by said act your orators are forbidden under severe penalties from leaving the pilot station at the mouth of the Mississippi river for more than seven consecutive days without leave obtained from the Governor of the State.

And your orators further complain and say that, by act No. 63 of the General Assembly of Louisiana, of the session of 1877, it is provided that whoever shall be guilty of acting or attempting to act as pilot to any vessel inward or outward bound to and from the port of New Orleans, who is not duly licensed branch pilot, shall suffer fine not exceeding the sum of one hundred dollars, or imprisonment not exceeding two months, or both, at the discretion of the court.

And your orators further complain and say that, by an act of the Congress of the United States, entitled "An act to facilitate the execution of, and to protect certain public works of improvement at the mouth of the Mississippi river," approved
419 June 1st, 1874, it was, among other things, enacted that the Secretary of War be directed to assume control over the particular channel at the mouth of the Mississippi river in course of excavation or improvement by the Government of the United States, (meaning the South Pass of said river,) as far as may be necessary to the carrying on and protection of such excavation and improvement, and until the same be completed; and he was, by said act, authorized to establish such regulations respecting the use of, or passage through, such channel as he might deem needful to fully protect the channel, and to facilitate the excavation, improvement, and use thereof; such regulations to be promulgated by publication thereof for ten days consecutively in two daily newspapers published in New Orleans, Louisiana, and the same in like manner to be changed from time to time.

And your orators show further, that in conformity with the provisions of said act, the Secretary of War caused to be
420 duly published in the New Orleans Times, and the New Orleans Republican, daily papers published in New Orleans, Louisiana, for ten days consecutively, to wit: on the 22d December, 1874, and 1st January, 1875, and all days inclusive, regulations established by him, providing, among other things, that no master or other person in command of a vessel drawing more than twelve feet of water shall attempt to pass the vessel under his command through any channel that the Government of the United States is maintaining, improving, or attempting to improve across a bar or the mouth of the Mississippi river, without having on board of such vessel a branch pilot licensed to pilot vessels across the mouth of the Mississippi river, as pro-

vided by the statutes of the State of Louisiana; also that captains, or other persons in command of tow boat or tow boats, in assisting vessels to pass through the said channel or channels, shall attach their tow boat, or tow boats, to the vessel assisted in such a manner as the pilot on the vessel shall direct, and
421 while engaged in towing such vessel shall obey all orders given by said pilot to change the direction, speed, or of power exerted by such tow boat, or tow boats, or their points of attachment to the vessel towed, nor in this matter shall the captain, or other person, or any one of them, exercise directions to do otherwise than as described by said pilot.

And your orators show further that in accordance with the letter and spirit of said act of Congress, and the said regulations of the Secretary of War, in conformity therewith, every vessel crossing the bar of the Mississippi river, whether outward or inward bound, is required to take a branch pilot, duly licensed according to the laws of the State of Louisiana, and to pay to him, for the services rendered by him, the recompense hereinbefore mentioned, as provided by section —— of the revised statutes of Louisiana; and your orators have the right, upon making tender of their services as pilots to such vessels, to require that they shall be received on board such vessels, their services
424 accepted, and the same compensated according to law.

And your orator further complains and says that by virtue of the said act of the Congress of the United States, and the said regulations made thereunder, the exclusive right is given to the branch pilots of the port of New Orleans to render services as pilots to vessels drawing more than twelve feet of water, in the South Pass, or across the bar at the South Pass of the Mississippi river, and that they have a right to be employed as pilots upon every such vessel entering or going out of said Pass or crossing said bar; that your orators are in number by far the largest part of the licensed branch pilots of the port of New Orleans.

And they further complain and say that one John W. Black, against whom this bill is brought, with the view and avowed purpose of depriving your orators of their means of livelihood as such pilots, and of injuring and ruining them and their profession, and of enriching himself at their loss and expense, has
423 lately, by means of persons in his employ, and though neither the said Black, nor such persons so in his employ, are licensed as or have the necessary qualifications of branch pilots of the port of New Orleans, undertaken to pilot vessels drawing more than twelve feet of water through the channel of and across the bar at said South Pass, and has actually piloted, or caused to be piloted, the bark "Mary C. Hale," having a draft of fifteen and a half feet of water, and the bark "Halcyon," having a draft of seventeen and a half feet of water, and this

although one of your orators, to wit, Peter Douhan, duly offered his services to pilot said bark "Mary C. Hale," and another of your orators, to wit, Bernard Michell, duly offered his services to pilot said bark "Halcyon," and the said Black has announced that he will continue so to pilot or cause vessels to be piloted by persons not branch pilots, and that he has made, and that he will make, and your orators are informed that he has made and entered into contracts with the masters of many vessels now
426 lying in and about to leave the port of New Orleans and with others intending to enter said port, to perform, by means of his employees, not pilots licensed as branch pilots under the laws of the State of Louisiana, on such vessels the duties of branch pilots in said South Pass, and on and across the bar at said South Pass of the Mississippi river, all in violation of the said act of Congress and the said regulations in conformity therewith made, and of the exclusive privileges or duties conferred on your orators and the other branch pilots so duly licensed, and in furtherance of the wicked and unlawful purpose of said Black to deprive your orators of their sole means of livelihood and that of their families, and of injuring and ruining them, and enriching himself at their expense.

That if the said Black is suffered to continue in and carry out his purpose, as hereinbefore stated, great damage and loss will be inflicted upon your orators, and they will be driven in much and expensive litigation, such as their moderate means
427 render them unable to bear.

And your orators further complain and say, that the exclusive right vested in them by law to exercise their said profession is worth to them exceeding the sum of five hundred dollars, and that damage in more than said sum will be inflicted upon each one of them by the said John W. Black from the said illegal acts and conduct by him committed and intended, and that their right to this action arises under the said act of Congress approved June 1, 1874.

In consideration of the premises, and for as much as your orators are remediless at law, and cannot have adequate relief save in a court of equity, where matters of this and a like nature are properly cognizable and relievable, and to the end that the said John W. Black may be enjoined from rendering, either by himself or by his agents, servants, or employees, services in piloting of vessels drawing more than twelve feet of water through the channel or across the bar of the South Pass of the
428 Mississippi river, may it please your honors to grant to your orators the writ of injunction against the said John W. Black, enjoining and strictly prohibiting him from rendering, either by himself or by the masters of steam tugs or other vessels belonging to or managed by him, or by other persons on such

tugs or vessels, or any other person not a branch pilot duly licensed according to the laws of Louisiana, employed by or acting for him, from acting or rendering, or attempting to render, services as a pilot, to or for any vessel drawing more than twelve feet of water, in the channel or at or across the bar of the South Pass of the Mississippi river.

And may it also please your honors, to grant the writ of subpœna commanding the said John W. Black to appear in this court, at a certain day and under a penalty to be therein named, to answer the premises and abide and perform such decree as may be passed herein, and as in duty bound, &c.

(Signed) RICHARD FRANCIS.

(Signed) CHAS. S. RICE, *Solicitor.*

429 UNITED STATES OF AMERICA, }
District of Louisiana, }

On this 7th day of May, A. D. 1880, before me, personally appeared the above-named Richard Francis, and made oath that he has heard read the foregoing bill subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his own information or belief, and that as to those matters he believes it to be true.

[SEAL.] (Signed) T. WHARTON COLLENS,
Notary Public.

Order.

The within bill being considered—

It is ordered that John W. Black, the defendant, show cause on Monday, the 10th day of May, 1880, at 10 o'clock a. m., why an injunction *pendente lite* should not issue herein as prayed for in bill.

NEW ORLEANS, LA., *May 7th*, 1880.

(Signed) EDWARD C. BILLINGS, *Judge.*

Marshal's Return.

430 Received, May 7th, 1880, by the U. S. marshal, and on same day, month, and year, I served a copy of the within rule on John W. Black, by delivering the same to him in person in the city of New Orleans.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Affidavit of J. W. Black Offered by Defendant. Filed May 10th, 1880.

John W. Black, being duly sworn, deposes and says that he is an owner of and interested in tow boats propelled by steam, en-

gaged in the business of towing seagoing vessels from the city of New Orleans to the sea, and from the sea where inward-bound vessels are usually taken in tow to the city; that his tow boats were engaged in that business when the barks Halcyon and Mary C. Hale were piloted to sea under the tow of one of his tow boats; affiant shows that on each of his tow boats he has employed a skilled and competent pilot, holding a license
431 as such under the laws of the United States for the regulation of steam-vessels navigating the waters of the United States; that affiant, with such pilots on his tow boats, is competent to take such vessels to the sea, and has towage contracts made in pursuance of his business, require him to tow the vessels to the sea; that he has a right to make such contracts, and the complainants have no cause of lawful complaint growing out of such contracts, and no right to interfere with him in the premises, and no order should be made by this court to diminish or impair his right to tow vessels from the sea to the city, or from the city to the sea, which embraces piloting the vessel taken in tow to sea and across the bar at the South Pass.

Affiant shows that the branch pilots have no relation with him, or right to control him in reference to whom he shall employ on his boats.

That the excavations and improvement of the channel at the mouth of the Mississippi river referred to in the act of
432 Congress, chapter 201 of June 1st, 1874, is completed and the control of said work vested in the U. S. authorities by the terms of said act has expired by the limit specified in said act itself, and no jurisdiction over this suit was conferred or attempted to be conferred by said act.

(Signed) J. W. BLACK,

Sworn to and subscribed before me this 10th May, 1880.

[SEAL.] (Signed) J. DEVONSHIRE,
U. S. Comm'r.

Affidavit of Peter Douhan, offered by Complainants on trial of Rule for Injunction. Filed May 10th, 1880.

RICHARD FRANCIS *et als.* *vs.* JOHN W. BLACK. } No. 9111. U. S. Circuit Court.

Personally appeared Peter Douhan, who, being by me duly sworn, deposed and said that he is a branch pilot, duly licensed under the laws of Louisiana, for the port of New Orleans; that on,
433 say Friday, the 30th of April, 1880, in the discharge of his duties, he went on board the bark "Mary C. Hale," then at the head of the South Pass of the Mississippi

river, and drawing 15½ feet of water, and then and there offered his services to the master of said bark to pilot her through the channel and across the bar of said South Pass, which offer was refused by the said master; that at the time of the said offer the said bark was alongside and in tow of the steam-tug "Mary E. Lee," of the Anchor Line of tow-boats, John W. Black, manager and owner, and was towed by said steam-tug from said point through said channel and across the bar to sea; that deponent, after said refusal of his services, went aboard and remained aboard said steam-tug "Mary E. Lee" until said bark had been put to sea; that the master, George Sheldon, of said steam-tug acted in the capacity of branch pilot during said passage of said bark, giving all the necessary orders for her steering and management, and this, although said Sheldon was not at the time a licensed branch pilot, under the laws of the State of Lou-
434 isiana; that from the said refusal and the action of said Sheldon, deponent was unable to perform his duties as branch pilot on said bark as required by law, and to collect the fees to which by law he was entitled as the said vessel went at once to sea.

(Signed) PETER DOUHAN,

Subscribed and sworn to before me this 10th day of May, A. D. 1880.

[SEAL.] (Signed) T. WHARTON COLLENS,
Notary Public.

Affidavit of Bernard Michell.

Offered by Complainants on Trial of Rule for Injunction. Filed May 10th, 1880.

RICHARD FRANCIS *et als.* vs. JOHN W. BLACK. } No. 9111. U. S. Circuit Court.

Personally appeared Bernard Michell, who being duly sworn, deposed and said: That he is a duly licensed branch pilot for the port of New Orleans, under the laws of the State of Lou-
435 iana; that on, say Friday, the 30th April, 1880, in the discharge of his duties as such branch pilot, he went on board the bark "Halcyon," drawing seventeen and a half feet of water, then at the head of the South Pass of the Mississippi river, and then and there offered his services to pilot said bark through the channel and across the bar of said South pass, which said offer was by ——— Dickenson, the master of said bark, refused; that at the time the master told deponent that he had bargained with John W. Black to tow and pilot his vessel to sea; that at the time the said bark was alongside and in tow of the steam tug "Mary E.

Lee," of the Anchor line of tow-boats, John W. Black, manager and owner, and was towed by said steam tug through said channel and across the bar to sea; that during said passage was, and remained, aboard said steam tug, and all the orders for the steering and management of said bark were given by Capt. Geo. Sheldon, master of said steam tug, though said Sheldon is not a licensed branch pilot; and said Sheldon stated to depo-
436 nent, that in giving said orders, and acting as pilot for said bark, he was acting under the orders and special directions of said John W. Black, and in a subsequent conversation, made substantially the same statement; that by said refusal of his services, and the conduct of said Sheldon, acting under the direction of said John W. Black, deponent was prevented from performing his duties as branch pilot on said bark, and from collecting his fees, to which he is entitled by law, as said vessel at once went to sea.

(Signed) BERNARD MICHELL.

Sworn to and subscribed before me this 10th day of May, 1880.

[SEAL] (Signed) T. WHARTON COLLENS,
Notary Public.

Hearing and Submission of Motion for Injunction.

Extract from the Minutes. April Term, 1880.

NEW ORLEANS, MONDAY, *May 10th*, 1880.

Court met pursuant to adjournment. Present: Hon. E. C. Billings, district judge.

437 R. FRANCIS *et al.* *vs.* JNO. W. BLACK. } No. 9111.

This cause came on to be heard on the complainant's application for an injunction *pendente lite*, and having been argued by counsel the court took time to consider.

Order—Injunction Allowed.

Extract from the Minutes of May 18th, 1880.

RICHARD FRANCIS *et als.* *vs.* JNO. W. BLACK. } No. 9111.

This cause came on to be heard on the motion of the complainants for an injunction *pendente lite*, and was argued by the solicitors of the parties respectively.

On consideration whereof, it is ordered that said motion be

allowed and accordingly that an injunction *pendente lite* issue enjoining and inhibiting the defendant as prayed for in said complainants' bill of complaints.

438 *Injunction to John W. Black. Issued May 19th, 1880.*

RICHARD FRANCIS *et als.*
vs.
JOHN W. BLACK. } No. 9111.

United States of America: The President of the United States, Circuit Court of the United States, Fifth Circuit and District of Louisiana, to John W. Black, greeting:

Whereas, it has been represented to us in our said circuit court, on the part of Richard Francis and others, in a bill in equity, lately exhibited against you, touching certain matters and things therein set forth.

Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said John W. Black, your attorneys, and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, that you absolutely refrain and desist from rendering, or attempting to render, either by yourself, or by your agents, servants, or em-
439 ployees, services in piloting of vessels drawing more than twelve feet of water through the channel or across the bar of the South Pass of the Mississippi river, or by masters of steam tugs or other vessels belonging to or managed by you, or by other persons on such tugs or vessels, or any other person not a branch pilot duly licensed according to the laws of Louisiana.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 19th day of May, in the year of our Lord 1880.

[SEAL.] (Signed) T. V. COUPLAND, *D'y Clerk.*

Marshal's Return.

Received May 19th, 1880, by the U. S. marshal, and on May 20th, 1880, I served a copy of the within injunction on the within-named John W. Black, by delivering the same to him in person in the city of New Orleans.

(Signed) E. S. CURRY, *D'y U. S. Marshal.*

440 *Subpœna in Chancery to John. W. Black. Issued May 19th, 1880.*

UNITED STATES OF AMERICA:

The President of the United States to the Marshal for the District of Louisiana, Greeting.

You are hereby commanded to summon John W. Black to ap-

pear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of July, 1880, then and there to answer a bill in chancery filed against him, wherein Richard Francis and others are complainants, and said John W. Black is defendant.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this
441 19th day of May, in the year of our Lord one thousand eight hundred and eighty, and the 104th year of American Independence.

[SEAL.] (Signed) T. V. COUPLAND, *D'y Clerk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court, on or before the 1st Monday of July, 1880, otherwise the bill may be taken *pro confesso.*

(Signed) T. V. COUPLAND, *D'y Clerk.*

Marshal's Return.

Received May 19th, 1880, by the U. S. marshal, and on May 20th, 1880, I served a true copy of the within subpœna in chancery on the within named John W. Black, by delivering the same to him in person in the city of New Orleans.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Entry at Rules.

Appearance of Jno. W. Black. Extract from chancery order book. June Rules, 1880.

442 JUNE 18TH.

RICHARD FRANCIS *et als.*
vs.
JOHN W. BLACK. } No. 9111.

John W. Black, defendant herein, by H. C. Miller, his solicitor, has this day entered his appearance to the complainants' bill of complaint.

Answer. Filed June 30th, 1882.

RICHARD FRANCIS *et als.*
vs.
JOHN W. BLACK. } No. 9111. U. S. C. C.

This defendant now, and at all times hereafter, saving and reserving to himself all manner of benefit of advantage of excep-

tions to the many errors and insufficiencies in the complainants' bill of complaint contained, for answer thereunto, or to so much thereof as this defendant is advised is material for him to answer unto, answers and says:

This defendant believes it to be true that the complainants are branch pilots, as stated in said bill, but whether they
443 are qualified or have spent years in acquiring their skill and knowledge as pilots, this defendant has no knowledge, and he believes it to be true they have established homes and families at the Southwest Pass, and that they own pilot boats, as required by the sections of the statutes referred to in the bill.

Defendant admits that s. 2703 of R. S. of Louisiana fixes the rates of pilotage; that act No. 99 of 1880 regulates qualifications of pilots, and that act No. 63 of 1877 is as stated in said bill, and that the act of Congress of 1st June, 1874, is of the character stated in the bill, but said act is referred to for greater certainty. Defendant is not able of his own knowledge, information, and belief to state accurately the nature of the instructions or regulations with respect to the use and navigation of the channel referred to in the bill, but believes they conformed to the act Congress.

This defendant denies that any law of the United States authorizes the demand of the complainant: this defendant
444 shows that the controversy herein is between parties complainants and this defendant, all of whom are citizens of Louisiana, and this court is wholly without jurisdiction of this cause; that any demand which the complainants may assume to make as branch pilots recognized by the laws of Louisiana, must be asserted in the State courts, and restricted to such remedies as those laws afford, and under said laws of Louisiana there is no warrant for the demand herein set up by the complainants.

Further answering, this defendant shows that he is the owner of tow boats engaged in the business of towing vessels from the city of New Orleans to the sea and from the passes to the city; that at the dates of the towing of the barks mentioned in the bill, he had on board of his tow boats pilots competent and well qualified, holding their licenses as pilots from the United States authorities, licensing them to act as pilots for tow boats from the city to the sea and from the sea to the city; he admits that
445 with such pilots on board his tow boat, properly officered and manned by the employees of this defendant, and under the pilotage of said duly-licensed pilot, did tow the bark Mary C. Hale, drawing 15 feet of water, and the bark Halcyon, drawing 17 feet, from the city to the sea, and on and across the bar at the South Pass. Defendant avers he has a perfect right to tow vessels with his said tow boats as he has done, and he admits he proposes to do so unless prevented by the process of this court, and

he denies that in doing so he violates any law or infringes any right of complainants.

Defendant shows that the laws of the State undertake to enact that a vessel entering or leaving the port of New Orleans shall take a pilot across the bar at the mouth of the river, or on refusing to take a pilot shall pay half pilotage fees, and said laws further undertake to prescribe that any one, not a branch pilot who shall pilot any vessel outward or inward bound, *i. e.*, from or to New Orleans, shall suffer fine or imprisonment, but this defendant shows that such legislation if valid, which is not ad-
446 mitted, can have no effect in this controversy, but tends to show that for any alleged complaint in respect to the premises the law furnishes remedies to which the complainants are restricted and must be remitted, and does not permit the complainants to interfere with this def't in his lawful business of towing vessels, and his right to tow such vessels is wholly unaffected whether such vessels choose or do not choose to take a pilot, but trust to the pilot on the tow; and this defendant asserts his right in the premises as beyond the reach of any questions or attack from complainants, and denies he has or had any view or purpose in the premises than to exercise his lawful pursuit as he conceives it to be.

Defendant believes it to be true that the services of a branch pilot was offered to each of said barks.

Defendant further shows that the act of Congress referred to in the bill, placed said channel at the passes under the
447 control of the United States under such regulations as might be made by the Sec'y of War respecting the use thereof "until said channel is completed." Defendant is advised and believes that said channel is now so well and firmly established as to require no such precautionary regulations as said act deemed necessary in the inception of the enterprise, and said regulations have ceased to have effect by efflux of the time for which they were to subsist. Defendant shows that the regulations while they subsisted, and the law under which they were enacted, were only intended to afford to the United States authorities the means of asserting control over the channel, and nothing in the law or regulations contained afford the least basis for complainants' demand, nor do they give this court jurisdiction over said demand. Defendant further shows that said channel as now completed affords the means of reaching the sea, and reaching the river from the sea, with such ease and facility as to preclude the risk of those accidents and dangers by reason of which the
448 legislation on the subject of branch pilots was enacted.

This defendant shows that the right of towing vessels from the sea to the city and from the city to the sea is valuable, and is worth to this defendant, and is of value exceeding five

thousand dollars; that his capital invested in said business of towing, and in the tow-boats owned by him, exceeds ten thousand dollars.

And this defendant denies all unlawful combinations charged without that any other matter or thing, material or necessary, for this defendant to answer unto, and not well and sufficiently denied, confessed or avoided, is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready to aver, maintain and prove, as the court shall direct, and prays to be hence dismissed with his costs.

(Signed) HENRY C. MILLER,
(Signed) BRANCH K. MILLER,
Solicitors for Def't.

449 Henry C. Miller, solicitor for def't who is absent, being duly sworn, deposes and says that he knows the contents of the answer filed in this suit of Richard Francis *et als. vs.* J. W. Black; that the same is true of his own knowledge, except as to those matters which are therein stated to be on the information and belief of the complainant, and, as to those matters, the deponent believes it to be true.

(Signed) HENRY C. MILLER.

Subscribed and sworn before me June 30th, 1880.
(Signed) F. A. WOOLFLEY,
Comm'r U. S. Circuit Court, District of Louisiana.

John W. Black, the defendant, being duly sworn, deposes and says that he has read the answer to the bill herein filed by Richard Francis; that all the matters and things therein stated upon his own knowledge are true and correct, and that the matters and things therein stated on the information of others, he believes to be true.

(Signed) JOHN W. BLACK.

Subscribed and sworn before me this 24th July, 1880.
450 (Signed) T. V. COUPLAND,
Comm'r U. S. Circuit Court, District of Louisiana.

Extract from Chancery Order Book, June 30th, 1880.

R. FRANCIS *et als.* }
vs. } 9111.
JOHN W. BLACK. }

John W. Black, defendant herein, by H. C. Miller and Branch K. Miller, his solicitors, has this day filed his answer to the complainant's bill of complaint.

Replication. Filed November 5th, 1880.

U. S. Circuit Court. In Equity.

RICHARD FRANCIS *et als.*
vs.
JOHN W. BLACK. } No. 9111.

The replication of Richard Francis, Wm. F. Levine, Charles W Read, Wm. F. Higgins, John McLaughlin, Geo. A. Falconi, Jos. Smith, John Ervine, Robert M. Wilson, Asa A. Douglass, Chas. Dennis, Philip Wuertz, Thos. D. Lewis, Dan'l B. Morgan,
451 Jos. Preble, Rob't N. Tilford, Gustave Gersdorf, Francis Bailey, Oscar Shultz, Walter Jarvis, Thos. Craig, John F. Gersdorf, Edward Breen, John Ahern, Wm. E. Pendleton, Harry Butcher, Benj. S. Ames, Peter Douhan, Bernard Michell, Francis Long, Chas. S. Clark, Edward C. Bannon, Francis Williams, Nath'l L. Cloutman, Thomas Wilson, Robert T. Wilson, James W. Lyons, Wm. B. Turley, Jos. Redman, Geo. W. Cloutman, Geo. Benson, Hugh Neil and George Osgood, complainants, to the answer of John W. Black, defendant.

These repliants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto saith, that they do and will aver, maintain, and prove their said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant, without that any other matter or thing in
452 the said answer contained materially or effectually in the law to be replied unto, confessed, or avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in their said bill they have already prayed.

(Signed) CHAS. S. RICE, *Solicitor.*

Extract from Chancery Order Book, November 5th, 1880.

RICHARD FRANCIS *et al.*
vs.
JOHN W. BLACK.

Richard Francis, Wm. T. Levine, Chas. W. Reed, Wm. F. Higgins, John McLaughlin, Geo. A. Falconi, Jos. Smith, John Ervine, Robert M. Wilson, Asa A. Douglas, Charles Dennis, Philip Wuertz, Thomas D. Lewis, Daniel B. Morgan, Joseph Preble, Robt. H. Tilford, Gustave Gersdorf, Francis Baily, Oscar

Schultz, Walter Jamo, Thos. Craig, John F. Gersdorf, Edward Breen, John Ahern, Wm. E. Pendleton, Harry Buttcher, Benj. S. Ames, Peter Douhan, Bernard Michell, Francis Long,
453 Chas. S. Clark, Edward C. Bannon, Francis Williams, Nath'l Cloutman, Thomas Wilson, Robt. T. Wilson, James W. Lyons, Wm. B. Turley, Jos. Redman, Geo. W. Cloutman, George Benson, Hugh Neil, and George Osgood, complainants herein, by C. S. Rice, their solicitor, have this day filed their replication to the answer of John W. Black, defendant herein.

Cross-Bill. Filed December 27th, 1880.

To the honorable the judges of the circuit court of the United States for the fifth circuit and district of Louisiana:

John W. Black, a citizen of Louisiana, exhibits this his cross-bill against Richard Francis and others, the complainants, in their suit against this defendant, No. 9111 of the docket of this court; and thereupon the said Black complains and says:

That in said original bill the complainants therein alleging that they are branch pilots of the port of New Orleans and claiming to have the exclusive right to pilot vessels drawing
454 more than twelve feet of water across the channel and bar at the Southwest Pass of the Mississippi river, pray that this defendant, who is the owner of tow boats engaged in the business of towing vessels from the sea to New Orleans and from New Orleans to the sea, be enjoined from towing vessels not having on board of them branch pilots, and that he and his agents, and others acting for him, be enjoined from rendering any services as pilots to vessels drawing more than twelve feet of water in the said channel or across said bar, the complainants in said original bill claiming that they alone are allowed to render such services and to charge and receive the fees prescribed by law for such services.

That to said bill this defendant has filed his answer denying the jurisdiction of this court, setting up that the suit is between citizens of the State as plaintiffs and this defendant, also a citizen of the State, and urging other defences to said demand, as appears by said answer, to which special reference is made.

455 And this defendant shows that not recognizing the pretensions of said complainant, and without waiving the objection to the jurisdiction of this court to take cognizance of this controversy, but desiring to protect himself from all interference by the complainants with his business of towing vessels, this defendant in the original bill, and complainant in this cross-hill has, since the issuing of the injunction herein, as prayed for in said original, employed three branch pilots of the port of New Orleans, fully qualified to exercise their profession, duly ap-

pointed by the Governor of the State, and holding certificates from the board as examiners, as required by law; the names of said pilots so employed by this defendant are Hiram Follett, Pliny Cox, and Charles Richards; and this defendant has placed said branch pilots employed by him on the tow boats owned or controlled by him, so that one of said pilots shall be on each of the tow boats owned or controlled by this defendant, whenever
456 shall tow boat shall be engaged in towing vessels from the sea to the city and from the city to the sea, through or across the said channel or bar; and having thus employed and placed said branch pilots on his boats, this defendant shows he is entitled to tow vessels at all times without interference from the complainant.

To the end, therefore, that this court, in the event that it sustains its jurisdiction, may, by its decree, prohibit and enjoin the complainants from interfering with this defendant, the officers of said tow boats owned or controlled by him or his agents, in towing or rendering services as pilots to vessels through said channel and across said bar whenever either of said branch pilots employed by defendant is upon the tow boat engaged on such towing or rendering such services; and that this defendant be decreed to have the right, by himself or his agents engaged on tow boats owned or controlled by him, to tow all vessels or to render
457 services as pilots to all vessels, or to act as pilot for such vessels towed by said tow boats owned or controlled by defendant, whenever either of said branch pilots employed by defendant shall be on the said tow boat having such vessel, or vessels, in tow; and that this defendant may have all such further general and equitable relief as the case may require.

May it please your honors to grant to this defendant the writ of injunction directed to said complainants as associated under the title of the Branch Pilots of the port of New Orleans, prohibiting them, and each of them, from interfering with this defendant, his officers and agents, in towing from the sea to the city, and from the city to the sea, through and across the said channel at Southwest Pass and the bar of said Mississippi river, or from acting as pilots for, or rendering services as pilots to, all vessels towed by the tow boats of or controlled by this defendant, whenever and so
458 long as there is on said tow boat either of the aforesaid branch pilots employed by defendant, and the writ of subpœna directed to said complainants, commanding them to appear and answer this cross-bill on a day named, and to stand to and perform such orders and decrees as this court shall make in the premises.

(Signed) MILLER, FINNEY & MILLER.
Solicitors for Complt.

John W. Black, the complainant in the cross-bill, deposes and says, that all the matters and things stated in the foregoing bill, upon his own knowledge, are true, and those matters and things therein stated on the information of others affiant believes to be true.

(Signed) JOHN W. BLACK.

Subscribed and sworn before me, Dec'r 27th, 1880.

(Signed) T. V. COUPLAND,
Comm'r U. S. Circuit Court, District of Louisiana.

Supplemental and Amneded Answer. Filed November 17th, 1881.

RICHARD FRANCIS *et al.* } No. 9111.
vs.
459 JOHN W. BLACK. } United States Circuit Court.

The amended answer of John W. Black, the defendant to the bill of complaint of Richard Francis *et als.*, complainants.

That the sole ground of jurisdiction in this court, exhibited by complainants' bill of complaint, is the regulation made and promulgated by the Secretary of War under and by virtue of the act of Congress entitled "An act to facilitate the execution of and to protect certain public works of improvement at the mouth of the Mississippi river," approved June 1, 1874, and that since the filing of the answer and cross-bill herein, denying the jurisdiction of this court herein, the said regulations made by the Secretary of War under said act of Congress have been rescinded, as appears by the order from the Treasury Dep't herewith filed as part hereof.

Wherefore defendant prays, that complainants be served with a copy of this amended answer, and that after due pro-
460 ceedings there be judgment in favor of defendant, as prayed for in the original answer, and for general relief.

(Signed) MILLER, FINNEY & MILLER,
Solicitors for Def't.

Exhibit.

Referred to and filed with the foregoing suppl. answer, November 17th, 1881.

OFFICE OF THE CHIEF OF ENGINEERS,
UNITED STATES ARMY,
WASHINGTON, D. C., *July* 19, 1881.

The regulations from this office, dated December 9th, 1874. made in conformity with the provisions of an act entitled "An act to facilitate the execution of, and to protect certain public

works of improvement at the mouth of the Mississippi river," approved June 1, 1874, are, by direction of the Secretary of War, hereby rescinded.

H. G. WRIGHT,
Chief of Engineers, Brig. and Bvt. Maj. Gen.

461 *Extract from Chancery Order Book, Nov. 17th,* 1881.

RICHARD FRANCIS *et al.*
vs.
JOHN W. BLACK. } No. 9111.

John W. Black, defendant herein, by Miller, Finney & Miller, his solicitors, has this day filed his supplemental and amended answer to the complainants' bill of complaint.

Motion and Order. Case assigned for hearing.

Extract from the minutes, April Term, 1882.

New Orleans, Saturday, May 20th, 1882. Court met pursuant to adjournment. Present, Hon. E. C. Billings, district judge.

RICHARD FRANCIS *et als.*
vs.
JOHN W. BLACK. } No. 9111.

Upon the application of Henry C. Miller, Esq., it is ordered that this cause be assigned for hearing on Monday, 5th June, 1882, at 11 a. m., and that counsel for both parties be notified hereof.

Consent—Bill and Cross Bill—Bill dismissed.

462 Extract from the minutes of June 5th, 1882.

RICHARD FRANCIS *et al.*
vs.
JOHN W. BLACK. } No. 9111.

Both parties assenting, it is ordered, adjudged, and decreed by the court that the complainants' bill of complaint herein, and the defendant's cross-bill be, and the same are hereby, dismissed.

463 The record of the case of George Osgood *vs.* J. W. Black *et al.*, civil district court, offered in evidence by complainant January 9th, 1883, and mentioned as No. 2 in the foregoing note of evidence, has already been transcribed on page 326 of this transcript.

The record of the case of the State, ex rel. Att'y Gen'l, *vs.* Hiram

Follett, civil district court, offered in evidence by complainant January 9th, 1883, and mentioned as No. 3 in the foregoing note of evidence, has already been transcribed on page 250 of this transcript.

The record of the case of the State ex rel. *vs.* Pliny Cox, civil district court, offered in evidence by the complainant January 9th, 1883, and mentioned as No. 4 in the foregoing note of evidence, has already been transcribed on page 283 of this transcript.

Record of the case of Board of Administrators of the Charity Hospital *vs.* Captain H. Geston, civil district court, offered in evidence by complainant January 9th, 1883, and
464 mentioned as No. 5 in the foregoing note of evidence:

State of Louisiana, city of New Orleans, first city court of New Orleans.

BOARD OF ADMINISTRATORS OF CHARITY HOSPITAL OF NEW ORLEANS
vs.
H. GURTON, Master of St. S. Bywell Castle and Owners.
} No. 616, Docket No. 1.

Copy of Petition.

To the honorable the first city court of New Orleans.

The petition of the Board of Administrators of the Charity Hospital of New Orleans respectfully shows unto this hon. court that the English steamship called the Bywell Castle, now in the port of New Orleans, and within the jurisdiction of this court, and H. Gurton, the master of said steamship, as well as the owners of the said steamship, whose names are to petitioner un-
465 unknown, and who reside beyond the limits of the State of Louisiana, are justly indebted to the said plaintiff in the sum of one hundred dollars for that on or about the 21st day of October, A. D. 1880, that said steamship, navigated by her said master for her said owners, bound from some port beyond the limit of the United States to the port of New Orleans, and being inward bound, reached the vicinity of the mouth of the Mississippi river, where the service of a pilot was necessary; that one John McLaughlin, then and there being a duly-licensed commission branch pilot for the port of New Orleans, spoke said vessel, and offered in due form to pilot said vessel, as such licensed pilot, into the Mississippi river, through the mouth and channel of said river.

That the said master of said vessel wholly refused to take and

employ the services of said licensed pilot, but then and there took, and there took and employed as a pilot the services of a person who was and is a person not a duly licensed branch pilot, and then and there permitted the said person, without license and
466 authority, to pilot and conduct said vessel from the Gulf of Mexico into the said river, through a pass of said river, contrary to the form of the statute of the State of Louisiana in such cases made and provided, by reason whereof the said vessels, her said masters and owners forfeited the full sum of one hundred dollars, for the payment whereof there is lien and privilege on said steamship, her tackle, etc. That under and by virtue of the statute of this State, your petitioners are entitled to recover said sum of money so forfeited, and the same accrues to the benefit of the said Charity Hospital of New Orleans.

Wherefore, the premises considered, your petitioner prays that the said H. Gurton, master of said steamship, may be duly cited to answer this petition, as well for himself as for the owners of said steamship within legal delay, and that the annexed affidavit and bond considered, that a writ of sequestration issue against said steamship Bywell Castle, her tackle and apparel, and that the said steamship be taken into custody of the
467 court and held to answer and respond to any judgment in this cause, and that after due proceedings had the said H. Gurton, master of the said steamship Bywell Castle, and her owners, be condemned to pay for the use and benefit of the Charity Hospital of New Orleans the full sum of one hundred dollars, besides all costs, and that said steamship be sold to satisfy said judgment and for general relief.

(Signed) J. R. BECKWITH,
Att'y for Petitioner.

(Signed) MAX DINKESPIEL, *Att'y.*

STATE OF LOUISIANA,
Parish of Orleans.

J. R. Beckwith, being pres't and duly sworn, deposes and says that he is the attorney for the plaintiff in this cause for this cause that he knows the contents of the foregoing petition and from knowledged derived from other sources than the plaintiff and not derived from said plaintiff, he truly believes the same to be true in manner and form as set forth in said petition, and that for and by reason of said facts so set forth, the plaintiff claims
468 and asks a writ of sequestration, and further saith not.

(Signed) J. R. BECKWITH.

Sworn to and subscribed before me, this 26th day of October, 1380.

(Signed) E. K. SKINNER, *Judge.*

Copy of Order.

Let a writ of sequestration herein issue on the plff. giving bond in the sum of two hundred and fifty dollars, conditioned as the law directs.

(Signed) E. K. SKINNER, *Judge.*

Copy of Citation. No. 616.

The State of Louisiana, First City Court of New Orleans, Hon. E. K. Skinner, judge.

BOARD OF ADMINISTRATORS OF THE CHARITY HOSPITAL
vs.
H. GURTON, Master Steamship Bywell Castle, and owners.

NEW ORLEANS, *Oct. 26th,* '80.

469 To H. Gurton, Master Steamship Bywell Castle, greeting:

You are hereby summoned to be and appear before this, the first city court of New Orleans, within two days next following the service hereof, to answer the demand against you by plaintiff, for one hundred dollars and *in* cents, as per claim filed, with interest and costs.

(Signed) E. K. SKINNER, *Judge.*

Copy of Return of Citation.

Received, New Orleans, Oct. 26th, '80, the within citation, and on the same day, month, and year served a true copy of the same on H. Gurton, master of steamship Bywell Castle, and owners, made defendant, on board said steamship, in the Mississippi river, at the foot of St. Mary street, by leaving it in the hands of George Thomham, 1st mate of the steamship Bywell Castle, he being over 14 years, and employed on board at its time of service, the captain and owners of said steamship being absent
470 at the time of service, all of which I learned from interrogating the above-named person.

(Signed) A. WHALON, *D'y Const.*

Copy of Writ of Sequestration.

State of Louisiana, Parish of Orleans, City of New Orleans.

No. 616.

To the constable of the First City Court for the Parish of Orleans:

Whereas J. R. Beckwith, attorney, hath this day declared on oath before this court that H. Gurton, master steamship Bywell Castle, and owners, are indebted unto the Board of Administra-

tors of the Charity Hospital, in the sum of one hundred dollars, and that the said board has a lien and privilege of said steamship, her tackle, &c., and that he has good cause to fear, and does fear, that the said steamship, tackle, &c., will be removed from the jurisdiction of this court, during the pendency of this suit, you are therefore commanded to sequester said steamship, tackle, &c., as above described, and to take the same into
471 your possession until further order of this court.

Witness the Hon. E. K. Skinner, judge of the first city court for the parish of Orleans.

New Orleans, October 26, '80.

(Signed) E. K. SKINNER,
Judge 1st City Court of New Orleans.

Copy of Return of Writ of Sequestration.

Received, New Orleans, Oct. 26, '80, the within writ of sequestration, and on the same day, month, and year executed, the same by seizing and placing a keeper on the steamship Bywell Castle, tackle, and apparel, and Oct. 27th, '80 the said seizure was released, the defendants giving a forthcoming bond.

(Signed) J. BISSELL, *Dept. Const.*

Copy of Motion.

B'd of Admstr's of the Charity Hospital of N. O.
vs.
H. Gurton, Master, &c. } No. 616.

First City Court for the Parish of Orleans, before E. K. Skinner, judge first city court.

On motion of Brice and Pardee, of counsel for def't:

It is ordered that plaintiffs be required to furnish surety
472 for costs in the sum of twenty dollars, within ten days.

(Signed) E. K. SKINNER, *Judge.*

N. O. Oct. 28th, 1880.

Copy of Exception.

Board of Admstr's of the Charity Hospital of New Orleans
vs.
H. Gurton, Master of the Steamship Bywell Castle, and owners. } No. 616.

Hon. the judge of the first city court of New Orleans.

Now into court comes defendant and for exception to this proceeding asks that the same be dismissed and writ of sequestration set aside, and vessel released on the grounds: first, that this hon.

court is without jurisdiction because of the virtue and character of plaintiff's demand, it being a claim in the nature of a maritime tort, cognizable only in courts of the United States in admiralty, and that the United States court have exclusive jurisdiction in such cases.

473 Second. That this court is without jurisdiction because the proper parties are not before the court, it being a suit *in venu* in the nature of a tort against a freight vessel, only amenable to the admiralty jurisdiction.

Third. That no sequestration will lie in this case, nor has any affidavit or allegation made by plaintiff authorizing such a writ to issue as required by code of practice.

Fourth. This court is without jurisdiction to issue a writ of sequestration herein, and that the affidavit is insufficient.

Wherefore defendant prays that this exception be maintained, the sequestration dissolved, the vessel released, and suit dismissed with costs.

(Signed) PRICE & PARDEE,
Atty's for Def't.

I hereby certify that the above is a true and correct copy of the documents filed in the above *and* entitled and numbered suit, as appears from the original on file in my office.

[SEAL.] (Signed) J. B. M. POMEROY,
D'y Clerk, First City Court.

JUNE 16, '83.

474 Record of the case of Richard Francis et als. *vs.* Geo. A. Falconi, No. 2142, civil district court, offered in evidence by complainant, January 9th, 1883, and mentioned as No. 6 in the foregoing note of evidence, has already been transcribed on page 357 of this transcript.

The act of partnership between the branch pilots, before J. A. Quintero, N. P., May 27, '79, offered in evidence by complainant, January 9th, 1883, and mentioned as No. 7 in the foregoing note of evidence, has already been transcribed on page 39 of this transcript.

475 Map of the jetties, offered in evidence by complainant January 9th, 1883, and mentioned as No. 8 in the foregoing note of evidence.

(Here follows map, marked page 475.)

476 *Pilots' License of Captain Glavey.*

Offered in evidence by complainant January 9th, 1883, and mentioned as No. 9 in foregoing note of evidence.

UNITED STATES INSPECTORS' CERTIFICATE.

To Masters.

[X] 4th Issue as Pilot. [X]

Issue. No. one.

This is to certify that John Glavey has given satisfactory evidence to the undersigned local inspectors of steam vessels for the district of New Orleans; that he is a skillful master of steam vessels, and can be entrusted to perform such duties upon the waters of rivers flowing into the Gulf of Mexico and their tributaries. Also as pilot on the Mississippi river, between New Orleans and sea, and is hereby licensed to act as such master on steam vessels for the term of one year from this date.

Given under our hands this second day of October, 1880.

(Signed) C. B. JOHNSON,
P. $12.50. *Inspector of Hulls.*
[SEAL.] " J. A. MOFFETT,
[13373.] *Inspector of Boilers.*

(Endorsements.)

Passed examination for color blindness October 2nd, 1880. Surgeon's certificate on file in the office of U. S. local inspector at New Orleans, La., as per endorsement upon surrendered license No. ——.

[SEAL.] (Signed) C. B. JOHNSON,
" J. A. MOFFETT,
U. S. Local Inspectors of Steam Vessels,
District of New Orleans.

Endorsement.

6438.	War 3 Dept.	1881.
2002.	Eng. B. Dept. 3 R. H.	1881.

477 The deposition of James M. Flinn and accompanying documents, offered in evidence by complainants January 9th, 1883, and mentioned as No. 10 in foregoing note of evidence, has already been transcribed on page 477 of this transcript.

Deposition of C. Donovan.

Offered in evidence by complainants January 9th, 1883, and mentioned as No. 11 in foregoing note of evidence.

United States Circuit Court, Eastern District of Louisiana.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et al.* } No. 9282.

Testimony taken by consent before T. Wharton Collens, notary public and short-hand reporter, March 13th, 1882.

Subject to all legal objections, except as to manner, form, and time of taking.

478 Appearances: Joseph P. Hornor, Esq., solicitor for complainant; J. R. Beckwith, solicitor for defendants.

C. Donovan, of lawful age, being by me first duly sworn, deposes and says, on behalf of complainant:

Direct examination by Mr. Hornor:

Q. What is your business? A. Civil engineer.

Q. Where are you employed? A. At Port Eads.

Q. At the South Pass of the Mississippi river? A. Yes, sir.

Q. How long have you been employed there? A. Five years.

Q. In what capacity? A. As United States assistant engineer.

Q. Who are you assistant to? A. Captain Heuer.

Q. Can you describe to us, captain, what your peculiar duties are there? A. My duties are to made surveys from time to time, to see that the channel required by law is maintained by Mr. Eads.

Q. Then you make soundings on these surveys? A. Yes, sir.

Q. Are any charts published by anybody relating to these soundings? A. Charts are published yearly; yes, sir.

479 Q. When was the last one published? A. The last one that is issued, was the survey made in June, 1880. There is one now in Washington, that will soon be out, of June, 1881.

Q. The survey of June, 1880, is the last one published? A. Yes, sir.

Q. When was the last survey made? A. The latter part of last month.

Q. Have you got a copy of it? A. Yes, sir.

Q. Will you let us have it? A. Yes, sir. (Witness produces survey.)

Q. How far beyond the sea end of the jetties do these surveys go? A. Well, they go about one thousand feet.

Q. Beyond the sea end of the jetties? A. Yes, sir.

Q. What is the depth of the water from the sea end of the jetties, as shown by that survey, out to sea; in those 1000 feet, I mean? A. I would have to look at the chart for that, as I don't remember the depth.—— * (By Mr. Beckwith: Did you make those soundings yourself? A. Well, I am aboard the boat when

they are made. They are made by leadmen employed.) * From the sea end out, the least depth is 30 7-10 feet.

Q. Anywhere in that channel? A. That is in the chan-
480 nel that is used in taking vessels out.

Q. How wide is that? A. That I shall have to measure for you; on the sea end about 165 feet.

Q. Do you or do you [not] know anything of a mud lump in that channel just outside of the sea end of the jetties, where there is sometimes water of only seventeen feet deep? A. I know of a lump beyond the ends of the jetties where there are sometimes only seventeen feet of water.

Q. Is that the only one of the kind? A. Well, there are other lumps further out.

Q. Further out than the one thousand feet? A. Yes, sir.

Q. Where is that lump that you speak of? A. That lump is 740 feet due south and 135 feet east of the present end of the last jetty.

Q. Is it in or out of the channel? A. Of what channel?

Q. Of the channel formed by the jetties? A. Well, it is not in the jetty channel.

Q. It is outside of it? A. It is outside of the jetty channel.

Q. Is it marked on this map? A. Yes, sir.

Q. Will you show it to me? A. (Witness points.)

Q. Can you leave this map with us? A. That is the
481 only copy I have in my office.

Q. Can you make a copy for us? A. Yes, sir.

Q. Please do so, and mark that lump that you speak of, with the letter "A" in red ink? A. Yes, sir.

Q. All the soundings were made by you, or in a boat by men under your command? A. Yes, sir.

Q. Under your direct observation? A. Yes, sir.

Q. What is the size of that lump, the breadth and width? A. Well, of what depth of water?

Q. Seventeen feet? A. Well, there is more than seventeen feet of water on the lump now.

Q. What is the shallowest depth now? According to the last survey the shallowest depth is 19 4-10 feet.

Q. What is the length and width of the lump at the place where it is 19 4-10 feet? A. That is a hard matter to tell, because we have soundings of that and other soundings deeper all around it.

Q. Did you ever know of any steamship being stuck on that lump? A. I don't recollect of any steamship being on there; no, sir.

Q. Or any other vessel? A. I know vessels to have struck the lump and to stay there for a short time.

482 Q. Can you remember any of them? A. No, sir; I

only remember of two cases where they did strike the lump; one of them I saw the vessel when she struck the lump.

Q. A. Do you remember her name? A. No, sir; that was some two years ago; perhaps longer.

Q. And the other one? A. The other—I don't remember that.

Q. One was two years ago? A. Yes, sir.

Q. How long ago was the other one? A. I couldn't say.

Q. Can't you say about? A. No, sir.

Q. Is it more than six months ago? A. Yes, sir.

Q. More than a year ago? A. Yes, sir.

Q. More than eighteen months ago? A. Yes, sir; the one I speak of being two years ago is the last one, the other was sometime before that.

Q. Do you know the steamship Australian? A. I have seen her.

Q. Did she ever get stuck on that lump? A. No, sir; not that I know of.

Q. Did you know of her being stuck somewhere down there; I mean lately? A. Yes, sir.

Q. How long ago was that? A. I think that was sometime in January, early in January, or last of December, I don't recollect which.

483 Q. Was it more than a month ago? A. Yes, sir; I believe it was.

Q. Wasn't it the last time she left this port? A. Yes, sir.

Q. She has not been back since? A. I believe it is the last time she left this port.

Q. Where did she go aground? A. I couldn't tell you, sir, where she first touched the bottom.

Q. Where was she when you saw her first after she got aground? A. The location—she went aground at about six o'clock in the evening, I think her location the next morning is on that chart.

Q. That red line? A. Yes, sir.

Q. You will please mark the copy with her name? A. Yes, sir.

Q. When did you see her there; what time of the day was it? A. I didn't see her there.

Q. How could you fix her location, then? A. My assistants at Port Eads made the location.

(Mr. Beckwith asks that the testimony of witness in this respect be stricken out.)

Q. You didn't see her while she was aground at all? A. No, sir.

Q. You don't know whether she ran aground on this mud lump marked "A" or not? A. No, sir.

484 Q. She might have gone aground there without your knowing it, and then drifted off to the other place? A. She might have done so.

Q. That is possible? A. Yes, sir; I think it is possible.

Cross-examination by Mr. BECKWITH:

Q. Do you remain in the office up here in the city or down at the jetties most of the time? A. At the jetties, sir.

Q. Whereabouts do you live at the jetties? A. About one thousand feet above where the jetty commences.

Q. Where it comes up to the main land? A. Yes, sir.

Q. What is the compass range of the thread of the channel where the jetty is? A. I can't tell you the compass range.

Q. Did you ever take any surveys there? A. We never use the compass, sir; we work according to true meridian.

Q. I ask you the compass bearing? A. I don't know the compass bearing.

Q. Do you know in what direction by the points of the compass it runs? A. No, sir.

Q. Never did know? A. Never did know so as to fix it in my mind.

485 Q. How are you able to delineate it on the chart? A. Delineate the channel? Q. Yes. A. Our soundings are located from stations which are computed by measuring triangles, starting from a given base of the triangle.

Q. I understand that; that gives you distances, but have you no data that you use in making that chart indicating the directions of the lines? A. No, sir.

Q. By whom was the original survey of that South Pass, the preliminary survey, made; I mean now for the construction of the jetties? A. I believe by the Coast Survey.

Q. You don't know then the course of the channel from the end of the jetties up to the head of the passes? A. No, sir.

Q. How do you lay down the lines of direction in making that chart, by angles from a base? A. By angles from a base. I never lay down a line of direction for the channel.

Q. Then there is nothing on that chart to show whether it runs east or west, north or south? A. Yes, sir; the meridian.

Q. That is the magnetic meridian? A. No; true meridian.

486 Q. With reference to the true meridian, what is the course of the thread of the channel from a point where the jetties start on the land to the other end? A. I don't know, sir.

Q. Can you tell by looking at your chart? A. I could if I had a protractor.

Q. Who is the draftsman that lays down those lines? I am.

Q. How do you do it, by tracing from a former plan? A. No, sir; that is the original plat of that chart.

Q. I ask you how in getting the outlines for the purpose of working in the office, for the purpose of laying down those soundings, do you get them by protraction or by tracing from former delineations of those same outlines? A. I get the outlines by tracing from former delineations.

Q. Can you state approximately the course of the thread of the channel from the head of the channel or land end of the jetties to the mouth or outer end of it? A. No, sir; I wouldn't like to make a statement of that without determining it.

Q. I don't ask you to be accurate. Can you tell how many degrees about it is east or west of true meridian? A. It is about southeast from the upper end to the lower.

487 Q. What is the bearing of this lump with 17 or 19 feet of water on it; is it east or west of the centre line of the channel down through the jetties? A. From the centre line through the jetties it varies in direction.

Q. Are not the jetties straight? A. No, sir; there is a curve.

Q. Is it not about half the center of the mouth of the jetties, and by an extension of a line drawn through the centre between the two jetties at the curve upon which the jetties run on the outer end? A. No, sir.

Q. Well, where is it, east, west, north, or south of that line? A. I understand you now to ask where it is with reference to a line which would be parallel to the prolongation of the jetties through the middle?

Q. Yes. A. It would be east of such line.

Q. And about how far? A. It is about three hundred feet.

Q. Is there a channel on either side of this lump? A. Yes, sir.

Q. On which side of the lump is the deepest channel, east or west? A. On the east side.

Q. Did you see the Australia at all while she was on
488 shore? A. No, sir.

Q. Where were you at the time, up here or down at Eadsport? A. I don't recollect whether I was here or on my way here from Galveston. I wasn't at Port Eads.

Re-direct examination by Mr. HORNOR:

Q. Those two vessels that you spoke of as having been aground some two years or more ago, how long did they remain aground? A. Well, only for a short time—probably not to exceed an hour; an hour would be the outside.

Q. The maximum? A. Yes, sir.

Q. Do you know how much water there was on that lump then—the smallest depth? A. Just at that time, I do not.

Q. Was it less than it is now, as shown on that chart? A. I think it was.

Q. How much? A. Well, probably not more than a foot less. It might be more than it is on the chart now, but then I think it was less.

Q. But not more than a foot less? A. Not more than a foot less.

By Mr. BECKWITH:

Q. How shoal water did you ever know to be on that lump? A. I believe it is a little over eleven feet.

489 By Mr. HORNOR:

Q. When was that? A. 11 6-10 feet in July, 1877.

Q. What is the lowest you have ever known it to be in the last two years? A. On the 6th of July, 1880, 15 2-10 feet. That is the shoalest it has ever been since that time.

Q. What is the shoalest it has been during last year, 1881? A. Since Jan'y 1st, 1881, 17½ feet.

Q. When was that? A. That was in August, 1881.

George A. Sheldon, recalled by Mr. HORNOR:

Q. Do you know the steamship Australian? A. Yes, sir.

Q. When did you last see her? A. On the 16th of February.

Q. Of this year? A. Yes, sir.

Q. Where was she then? A. She was ashore outside the jetties.

Q. What time of the day was it you saw her on the 16th February, 1882? A. About daylight in the morning.

Q. What time was daylight? A. About six o'clock.

Q. Where was she laying then? A. To the westward of the west jetty on the spit.

490 Q. You are familiar with the mouth of the jetty down there? A. Yes, sir; I have been running in and out of it ever since it has been a jetty.

Q. Do you know anything about a mud lump down there? A. I only know of it so far as I have seen it on the chart. I never found any less water than twenty-four feet.

Q. How far was that mud lump from where the steamship Australian was aground? A. Four or five hundred feet to the westward.

Q. Did you see her when she went ashore? A. No, sir.

Q. You don't where she went ashore? A. No, sir; I can't say. I saw her when she passed the station the evening before.

Q. Will you say whether or not it was possible for her to strike that mud lump before she went ashore where you found

her? A. No, sir; it was not possible, because if she had struck the lump she would swing clear of everything and anything.

Q. Why? A. Because there is plenty room between the lump and the shore on the west side of the jetty.

Q. You say you saw her when she went down the evening before? A. Yes, sir.

491 Q. What time was it? A. About six o'clock, a little after.

Q. Was it dark? A. Just getting dark.

Q. Was it foggy? A. Yes, sir; little foggy.

Q. You didn't see her after that until the next morning? A. No, sir; not until the next morning.

Q. How long did she stay aground there? A. When I left that evening she was ashore yet. I came up with a bark. I passed her twice that day with a bark in tow while she was laying there.

Cross-examination by Mr. BECKWITH:

Q. Did you ever produce those accounts that you promised to produce when you were here before? A. Yes, sir; (witness refers to exhibits annexed to his former deposition.)

Q. When did you get this account?—(Exhibit B of December 14th, 1881.) A. From the office.

Q. When were these accounts delivered to you? A. Generally about the end of the month, sometimes after.

Q. Do you swear that these are the accounts that were delivered to you? A. Yes, sir.

492 Q. On the first of the month? A. About the end of the month—sometimes a few days sooner—about the first of the month, after the month's work was made up.

Q. Did you keep any books yourself? A. No. sir; I simply kept a log-book, and private memorandum in pencil.

Q. Have you got those now? A. I don't think I have; they may be aboard the boat.

Q. How long did this alleged charter continue in force? A. I forget the date of it.

Q. I know; but how many months? A. I forget how many months we run; it is stated there in the charter. There is the accounts for each month.

Q. You state that this charter-party and accounts, are truthful statements of the business relations between you and Black? [—] *No*, sir.

Q. No doubt about it? A. No doubt of it.

Q. No other arrangement? A. Not to my knowledge; I know of no other.

Q. When was this charter-party that is attached to your depo-

sition, marked Exhibit " A," made? A. Sometime in September or October.

Q. I ask you when that paper was written out? A.
493 I don't know exactly the date; sometime in September or October.

Q. Wasn't this paper made up entirely after you testified here before? A. No.

Q. Was it in existence before that time? A. Yes, sir.

Q. Where have you kept it? A. Aboard the boat in the desk.

Q. That is the identical paper, is it? A. Yes, sir.

Q. And you have had that paper aboard the boat? A. Let me see it; if that is the charter-party, I had it aboard the boat in my desk.

Q. I ask you if you had that paper before you testified here before? A. Yes, sir.

Q. You have no doubt about that either? A. None whatever, sir.

Q. Have you got any receipts or vouchers of any of these transactions between you and Black? A. None except those that has been produced; I don't think I have.

Q. No other accounts have been rendered between you than these that you have produced? A. No, sir.

Q. How long a ship is the Australian? A. I suppose she is about 340 feet.

Q. How was she heading when you saw her aground? A. I should judge she was heading about south-east by east.

Q. About in the line of the jetties? A. Yes, sir.

494 Q. Do you know whether she has got a right or left hand screw? A. Right hand screw.

Q. How do you know? A. Because I piloted her.

Q. What do you mean by a right hand screw? A. A screw that turns her bow to the right when she backs.

Q. That is what you call a right hand screw? A. Yes, sir; throws her bow to starboard when she backs.

Q. How do you know that if she had stuck on the middle ground she would have swung so as to have been clear of the lump, and with her head up stream? A. Because there is 400 feet from the lump to the shore to the westward.

Q. How much water was there in the westward channel at that time? A. I don't recollect exactly, sir.

Q. How much water did the ship draw at that time? A. I understood ——

Q. I ask you of your own knowledge. A. I don't know.

Q. How do you know she could swing in that channel? A. Because there is room. She is 340 feet long, and she has 400 feet to swing in.

Q. How do you know that? A. Because I am coming in and out of there every day with vessels of deep draft.

495 Q. Did you ever sound either of the channels? A. Yes, sir; often.

Q. How often do you take vessels out of that channel—westward channel? A. We generally go out of the east channel.

Q. That is going out; but coming in? A. About as often as we do by the other. If the vessels come in on the westward, we come in that way; if they come in on the east, we come in by the east channel.

Q. How much is the highest water you have ever found in sounding in the westward channel? A. Thirty feet.

Q. All the way up? A. Yes, sir.

Q. Never knew anything less? A. No, sir. I don't say there never is; I never found less.

Q. You would take a thirty-foot vessel through there any time without sounding? A. Yes, sir; I would.

496 *Deposition of Robert Wilson.*

Offered in evidence by complainants January 9th, 1883, and mentioned as No. 12 in foregoing note of evidence.

United States Circuit Court. Fifth judicial circuit, eastern district of Louisiana.

JAMES M. FLINN
vs.
RICHARD FRANCIS. } No. 9282.

Appearances: Jas. P. Hornor and F. W. Baker, for complainant, Jas. R. Beckwith, for defendant.

Witness: Robert Wilson.

Testimony taken by consent on behalf of complainant at the office of Jas. P. Hornor and F. W. Baker, No. 16 Carondelet st., New Orleans, La., Nov. 25th, 1882.

Reported by Mark Breeden, Jr., notary and phonographer, 16 Carondelet st., New Orleans, La.

497 Robert Wilson, sworn by Mark Breeden, Jr., notary public. Examined-in-chief on behalf of complainant, by Jas. P. Hornor, Esq., as follows:

Q. What is your age, Captain Wilson? A. 42, sir.

Q. And where is your residence? A. At Port Eads.

Q. What is your business? A. Pilot.

Q. Branch pilot? A. Yes, sir.

Q. How long have you been a branch pilot? A. Since 1862, I believe, or 1861.

Q. Continuously? A. Yes, sir.

Q. Do you know the steamboat Mary Lee? A. Yes, sir.

Q. How long have you known her? A. I have known her for three or four years.

Q. Do you know a man by the name of Pliny Cox? A. Yes, sir.

Q. How long have you known him? A. I cannot say for sure how long I have known him; I have known him, probably, eight or ten years.

Q. What has been his business during that time? A.
498 He has been bar-piloting and river piloting together.

Q. Branch Pilot? A. Yes, sir.

Q. When did he commence to be a branch pilot? A. I could not say I am sure what year it was he was a branch pilot.

Q. Well, it was about ten years ago, was it not? A. If my memory serves me right it was in Governor Kellogg's time.

Q. Gov. Kellogg's time? A. Yes, sir.

Q. That was prior to 1876? A Yes, sir.

Q. Was Cox ever connected with the steamboat Mary Lee in the branch piloting business? A. I believe he was; yes, sir.

Q. Do you remember when that was? A. I cannot say the date exactly when it was—about two years ago.

Q. About two years ago? Do you remember when Cox left the Mary Lee? A. The date, no, sir; I cannot say.

Q. That was about two years ago, was it not? A. About that.

Q. Do you know how he came to leave the Mary Lee?

By Mr. BECKWITH:

It is understood that this testimony is all taken under objection?

By Mr. HORNOR: Yes; I agree to that.

499 By the WITNESS: Well, sir, I went and asked him to leave it.

Q. You went and asked him to leave it? A. Yes, sir.

Q. Who were you acting for? A. For myself, at the time, and the pilots' association together.

Q. For the pilots' association together? What inducements did you offer him to leave the Mary Lee? A. I offered him whatever sum they were paying him—the owners of the Mary Lee were paying him at the time.

Q. How much was that? A. $150 a month to go quartermaster on the Underwriter.

Q. Was that the only inducement you offered him? A. That was the only inducement I offered him.

Q. Did he leave her? A. He left the Mary Lee, yes, sir.

Q. Did he go quartermaster on the "Underwriter?" A. Yes, sir.

Q. How long did he continue to do that? A. About a week, sir, to the best of my knowledge.

Q. What was the "Underwriter?" A. A steam pilot boat.
Q. Belonging to the pilots' association? A. Yes, sir.
Q. Was Cox paid his $150 a month? A. Yes, sir.
Q. Who paid him? A. I believe Captain Francis paid him.
500 Q. With whose money? A. With the association money.
Q. What did he do for the association after he quit the "Underwriter," after working on her for a week? A. Nothing, that I am aware of.
Q. He still continued to get his money? A. He did; yes, sir; for some time after; I cannot say exactly how long.
Q. Do you know whether he gets it yet or not? A. I don't think —. I have heard that he does not get it; I am not sure.
Q. For how long did he get it? A. I cannot say that either.
Q. For more than a month? A. Yes, sir.
Q. For more than six months? A. Yes, sir.
Q. For more than a year? A. I cannot say whether it was for more than a year or not.
Q. Were you one of the pilots' association at that time? A. Yes, sir.
Q. How did you happen to go to him to make him this offer? A. Because he was working against us, and I wanted a quartermaster, and I wanted to get him out of that boat if I could.
Q. Did you do it of your own motion? A. I did it of my own motion; yes, sir.
Q. Well, did the pilot association ratify your action? A. They did; yes, sir.
Q. In what way? A. By telling me that I done per-
501 fectly right after I had got the man off the boat.
Q. Did you have any consultation with any other parties before you went to him with this offer? A. No, sir.
Q. Done of your own motion? A. Done of my own will; yes, sir.

Cross-examination by Mr. BECKWITH, counsel for defendant:

Q. What pilots told you you had done perfectly right? A. Wm. E. Pendleton for one, R. H. Tilford, and there was several pilots present.
Q. There are nearly fifty pilots, are there not, in the association? A. Yes, sir; nearly.
Q. Was that matter ever ratified by any meeting of the association? A. I don't know that it was. It was generally understood, though, by all the pilots, all the members; but I don't know that there was any particular meeting called to that effect, or for that purpose.
Q. Did you report to any of the people at the time that you

have named that $50 a month or that $150 a month was the sum you agreed to pay him as quartermaster? A. I did, sir.

Q. You didn't name it to be $50 at first? A. No, sir.

502 *Finis.*

Signature waived by counsel.

Deposition of Bernard Michel.

Offered in evidence by complainants, January 9th, 1883, and mentioned as No. 13 in foregoing note of evidence.

United States Circuit Court, Fifth Judical Circuit, Eastern District of Louisiana.

JAMES M. FLINN
versus
RICHARD FRANCIS. } No. 9282.

Appearances: Jos. P. Hornor, Esq., for complainant, Jas. R. Beckwith, Esq., for defendants.

Witness: Bernard Michel, Esq.

Testimony taken by consent, on behalf of complainants at the office of Joseph P. Hornor, Esq., No. 16 Carondelet street, New Orleans, La., November 9th, 1882.

503 Reported by Mark Breeden, Jr., notary and phonographer, 16 Carondelet st., N. O., La.

Bernard Michel, sworn by Mark Breeden, Jr., notary public, examined in chief, on behalf of complainants, by Mr. Hornor, as follows:

Q. What is your business, Mr. Michel? A. Branch pilot of the port of New Orleans.

Q. How long have you been a branch pilot? A. Since January, 1878, sir.

Q. Did you belong to the Branch Pilots' Benevolent Association? A. Yes, sir.

Q. Or whatever the name of it is? A. Branch Pilots' Association.

Q. Branch Pilots' Association, you were a member of that? A. Yes, sir.

Q. Are you still a member of that? A. No, sir.

Q. When did you cease to be a member? A. On August 23d.

Q. Of this year? A. Yes, sir.

Q. Are you acquainted with a man by the name of Pliny Cox? A. Yes, sir.

Q. How long have you known him? A. About seven or eight years.

504 What was he doing on the "Mary Lee?" A. He was pilot—taking out vessels and bringing them in.

Q. Do you remember when he quit towing them, when he quit

the Mary Lee? A. Yes, sir; I remember near about the time?

Q. When was it? A. It was in 1881—the latter part of January or the first part of February.

Q. Do you know how he came to quit her?

By Mr. BECKWITH to Mr. Hornor: What is the object of these questions?

By Mr. HORNOR: Mr. Beckwith asks me my object in asking these questions. I answer, my object is to prove that the branch pilots' ass. induced Mr. Pliny Cox, by promises and otherwise, to quit the employment, to quit the business of piloting vessels of the steamer Mary Lee, and to allow the judgment to be rendered against him in the case in which he was sued to be destituted of his office of branch pilot. That is about it, Mr. Beckwith.

By Mr. BECKWITH: The evidence to the end and purpose above stated is objected to by the solicitor for the defendants
505 in the bill as being irrelevant and tending to support no issue named in the bill in the pleadings. This objection, it is understood, shall attach to this testimony without further repetition.

By Mr. HORNOR: Certainly.

Q. Now, Mr. Michel, will you answer the question; do you know he came to leave the Mary Lee? A. Yes, sir; we hired him to work for us—the pilots' association.

Q. In what capacity? A. As quartermaster, for a couple of weeks.

Q. And after that? A. After that he didn't do anything.

Q. How much were you to pay him? A. We paid him one hundred and fifty dollars a month.

Q. For how many months was he paid one hundred and fifty dollars a month? A. Between fifteen and eighteen months I think it was.

Q. During all that time he only did two weeks' work? A. That is all, sir.

Q. Do you remember when they ceased—when he ceased to be paid one hundred and fifty dollars a month? A. I think it was in June.

Q. Of this year? A. Yes, sir; near about it.

Q. Was this paid to him in consideration for his leav-
506 ing the Mary Lee? A. I think it was, sir.

Cross-examination by Mr. BECKWITH:

Q. Where were you born? A. Sir?

Q. Where were you born? A. Born in Tenro, England.

Q. When did you come to this country? A. In 1866.

Q. At what age? A. 14, sir.

Q. Did your parents come to this country with you? A. No, sir.

Q. Where were you naturalized? A. In New Orleans.
Q. What? A. In New Orleans.
Q. What court? A. Second district court.
Q. When? A. I forget the date.
Q. What year was it? A. I forget that too.
Q. How many years ago? A. I don't remember that.
Q. Who was the judge of the court at the time? A. Judge Tissot.
Q. Which one; the old man or the young man? A. I didn't know that there was but one.
Q. Was he a youngish man or old man? A. He looked to be middle age.
Q. Don't remember whether it was, one, two, or three years ago? A. Six or seven years ago.
Q. Do you remember what time of the year? A. No, sir.
Q. Under what name were you naturalized? A. Bernard Michel.
Q. Is that your name in England? A. Yes, sir.
507 Q. Never known as Benjamin Michel? A. No, sir; they call me "Ben" for short; not Benjamin.
Q. You say you at one time belonged to the Association of Branch Pilots of the port New Orleans? A. Yes, sir.
Q. When did you become a member of that association? A. Joined it when the balance of them did.
Q. You signed the documents, did you not? A. Yes, sir.
Q. On which that association rests? A. Yes, sir.
Q. At the time it was organized? A. Yes, sir.
Q. You knew what you were signing, did you not? A. Yes, sir.
Q. How long did you continue a member of that association? A. Until August 23d.
Q. Now, just how did you leave it—get out of it? A. I left it because they violated the agreement; they had not carried it out in the proper manner.

By Mr. HORNOR:

Q. Because what? A. Because they hadn't carried the business on in the proper manner.

By Mr. BECKWITH:

Q. When did you discover that? A. When I didn't get enough money to live on. They had taken in five or
508 six other members.
Q. What members did they take in? A. Took in John Small, Captain Burdick, Hugh Neal; those were the members that were taken into the association after I joined it.
Q. They were branch pilots, were they not? A. Yes, sir.

Q. You knew when they were taken in? A. Yes, sir; pretty near about.

Q. You remained in the association, did you not, a long time after they were taken in? A. No, sir; not after the two last ones were taken in.

Q. When were they taken in? A. About two months before I left—two or three months.

Q. Why did you not leave when they were taken in? A. Because I thought I could get along; I thought I might manage.

Q. Now, will you tell us just exactly how you got free from your obligations to that association, just how it was done? A. Only that I sent in my resignation—drawed out; that's the only way.

Q. When did you send your resignation in? A. The latter part of August.

509 Q. Was it not true, sir, that the first act you did was to go yourself and put yourself on board of a ship out of your turn, and bring her up here? A. No, sir.

Q. What is the first ship you brought in; have you any account? A. The steamship Jamacian.

Q. Well, how did you come to be towing her in? Was it your turn? A. No, sir; but the man gave me his turn.

Q. Who gave you his turn? A. Joseph Preble.

Q. You were in command of the pilot boat bound up at the time? A. Yes, sir.

Q. Did you get the pilot money? A. I did.

Q. What did you do with it? A. I collected the pilot money and sent the receipt to the association.

Q. What did you do with the money? A. I spent it.

Q. That is the way got [out] of the association then? A. Yes, sir.

Q. Now, sir, how many other vessels have you brought in? A. I don't know how many—didn't count them.

Q. Don't you know? A. I brought in a few more, sir, I don't know how many; I didn't study that up.

Q. You don't know whether you brought in any or not? A. Yes, sir; I know I brought in some.

Q. Well, what are their names? A. The "Lord Collingwood," was one.

510 Q. Collect the money of her? A. Yes, sir.

Q. Appropriated it to yourself? A. Yes, sir.

Q. What other vessels? A. I think the "Argosse," was another one.

Q. Did you appropriate that money to yourself? A. Yes, sir.

Q. What other vessels? A. The "Louisa H" I think was another one.

Q. You appropriated that money to yourself? A. Yes, sir; I believe I did.

Q. Did you bring in any other? A. I brought in the bark "Matilda Hilyard."

Q. What? A. The bark "Matilda Hilyard."

Q. Appropriate the money for her to yourself? A. Yes, sir.

Q. Any other vessel? A. I think that is all, sir; all that I remember.

Q. And what pilot-boat were you attached to during this time? A. I was owner in the "Jennie Wilson" and the "Underwriter."

Q. As a member of the association? A. No, sir; as owner of those boats.

Q. What? A. As owner in those boats.

Q. Didn't you get all the ownership you got in those boats as a member of the association? A. I suppose so; yes, sir.

Q. You didn't belong to the association then? A. I don't belong to it now.

511 Q. Did you when you brought these vessels in? A. I was owner of the boat, sir.

Q. Did you belong to the association when you brought these boats in? A. No, sir.

Q. These vessels? A. No, sir.

Q. You had no control then over these vessels? A. Yes, sir; I had control as we all hold them.

Q. Did you possess a vessel? A. No, sir.

Q. Now, how did you get out to these vessels? A. I boarded them, got out at sea.

Q. How did you get out to sea? A. Went out there in a boat.

Q. What boat was it? A. A small boat.

Q. Was it the boat of any of these vessels that you speak of? A. It was a boat that I owned at the time that I joined the association.

Q. Well, I ask you if it was a boat, a steam or a sail pilot-boat of the association? A. Well, she was attached to those boats but my own; owning a share in the boats, and owning this small boat too.

Q. That is all the way they were attached. A. Yes, sir.

Q. What was that boat used for, the small boat, while you were there in the association? A. She was not used for anything, she was hauled up.

512 Q. She never had been used for piloting purposes until you had used her on these vessels? A. Yes, sir; she had been used before.

Q. Who had used her? A. I had, sir.

Q. When? A. She belonged to the pilot boats before the association was formed.

Q. Belonged to what pilot boat? A. Belonged to the "Sam Houston," and belonged to the pilot boat "Francis."

Q. That boat? A. Yes, sir; it belonged to me, and I belonged to the boats that I have named, at the time.

Q. You had no interest in either the "Francis" or the other vessel at the time? A. Yes, sir; she was paying me so much a month.

Q. Before the association was formed? A. Yes, sir.

Q. On what boats? A. On the "Francis."

Q. You mean the steamer "Francis?" A. No, sir; the sailing pilot boat "Francis."

Q. Who owned her? A. Smith owned her; he was paying me. I acted for him.

Q. What has become of the "Francis?" A. She is sold; Smith sold her.

Q. What? A. He failed to pay for her and she was sold.

Q. When was she sold? A. I don't remember; after the association was formed.

513 Q. You claim that since the 23rd of August you have not belonged to the association at all? A. I have not been working for them. There is property there belonging to me, sir.

Q. Now, I ask you if you claim to belong to the association? A. In one sense of the word I do—until they pay me off, sir.

Q. Tell us in what sense that is you belong to it exactly. A. I represent so much stock in the boats, sir.

Q. Under that contract? A. Yes, sir, under that contract.

Q. But you say the contract is no account any more? A. Well, they violated it; they broke the contract.

Q. You never did? A. No, sir.

Q. You never did; never did a dishonest thing about it? A. Not to my knowledge.

Q. You have not done in relation to this whole matter a dishonest act? A. No, sir.

Q. Do you understand the pilot law? A. Yes, sir.

Q. Is it not true, sir, that your system of making profit as a branch pilot has been to come to the city of New Orleans and to get hold by dicker or otherwise of the vessels of the asso-

514 ciation and pilot them out? A. No, sir; I didn't take them out until when that I thought I was entitled to; until they commenced to take mine out.

Q. What vessels have you taken out? A. I have taken out those vessels that I brought in.

Q. Well, I want something more specific. What was the first steam vessel that you took out? A. I think it was the "Dallum Tower."

Q. Who piloted her in? A. I don't remember.

Q. You didn't? A. No, sir; one of my partners at that time did. I was working in the association when she was piloted in.

Q. You didn't belong to the association when you piloted it out, though? A. No, sir.

Q. Do you call that stealing one of your vessels? A. I was entitled to that vessel, sir.

Q. Why? A. Because I was working in the association, had a share of those vessels in town.

Q. That is your idea about it, is it? A. Yes, sir.

Q. You under-bid the statute rates to get her? A. No, sir; I didn't, sir.

Q. Now, what is the next vessel you took out? A. I forget which is the next one; one of the steamers that I had in, I think it was the "Louisa H."

515 Q. Now, what was the next one you took out? A. I disremember; one of those that I had in.

Q. Well, the others? A. I don't know, sir; one of those vessels that I named.

Q. You said—I understood you to say that the association that you said you don't belong to had taken some steamer out that you had brought in? A. Yes, sir.

Q. What steamer was that; do you remember that? A. The "Lord Collingwood."

Q. When was that? A. It was about a month ago, sir; near it.

Q. Is that the only one that you know of? A. No, sir; we took out another one, called the "Argosse."

Q. Well, now, tell us again what steamer you have taken out that you didn't take in? A. I think the Dallum Tower, I think is the only steamer that I took; I am not positive; I think that is the only one.

Q. The only steamer that you didn't bring in? A. That I didn't bring in.

Q. Now, sir, have you taken out any sail vessels? A. Yes, sir.

Q. What sail vessels have you taken out? A. I took out the Port Adler—a bark.

Q. Who brought her in? A. I don't know who brought her in.

516 Q. Did you? A. No, sir.

Q. You think that was an honest transaction? A. Yes, sir; I boarded the vessel and had possesion of her and everything.

Q. What other vessels—sail vessels? A. The bark Carniola.

Q. Well, did you bring her in? A. No, sir.

Q. You appropriated the money yourself for taking her out? A. Yes, sir; I intend to.

Q. What other vessels? A. The ship Valley Dora—a sailing ship.

Q. Who piloted her in? A. I don't know, sir.

Q. You think it was an honest transaction, taking her out and appropriating the money? A. Yes, sir.

Q. What other vessel? A. I don't remember any other, sir.

Q. Have you not taken out three sailing vessels recently? A. Those are the three, sir.

Q. You have picked up those and engaged your pilotage here in the city—those that were going out? A. No, sir.

Q. Where did you engage your services? A. Aboard of the vessels, sir.

Q. Where were you when you did it? A. One of them I didn't get the pilotage of. I didn't know anything about it until I was outside of the bar, had got outside of the bar. One

517 I got, the order of one, outside of the bar.

Q. Didn't go on her? A. Yes, sir; piloted her out, and got the money after I got out.

Q. You are not answering my question. I ask you where you made the engagement to take the three vessels out? A. That vessel, I didn't engage her at all. I told the captain that I would pilot her, carry her out, if he was satisfied he could pay me. He knew me. I had piloted his ship two or three times before. He said, all right.

Q. Where was it that you did it? A. On the way down the river.

Q. Where did you board the vessel? A. In New Orleans.

Q. I ask you again if one of your system of operations is not to come up here and induce the masters of vessels that have been piloted in by the association to allow you to pilot them out? A. I didn't induce them, because they are induced by patronizing the opposition—opposition pilots.

Q. You call yourself an opposition pilot? A. Yes, sir.

Q. Have you got any agent, or emissary, or representative here in the city? A. I am just engaging a man to-day.

518 Q. What? A. Engaging a man to-day.

Q. Whom did you engage? A. I object to tell you.

Q. What? A. I object to tell you.

Q. You decline to tell me? A. Yes, sir.

Q. Why? A. I don't think any man has a right to know my private business but myself.

Q. You are doing an honest business, a fair business, are you not? A. Yes, sir.

Q. In your opinion? A. Yes, sir.

Q. You have employed this man for an honest purpose, in your opinion? A. Yes, sir.

Q. Nothing dishonest or dishonorable about it at all? A. No, sir; not that I know of, sir.

Q. What, then, is your objection to disclose the name of this honorable man to transact honorable business for you? I don't think that anybody has the right to knowing business outside.

Q. Do you know any good reason why you should conceal it? A. Well, I have not any particular reason, sir, only that I don't wish him known.

Q. Still, you decline to tell that? A. Yes, sir; I decline to tell that.

Q. Will you tell us what your arrangement with this man is?

A. Have not made any arrangement—simply engaged
519 him to attend to my ships.

Q. What did you engage him to do? A. Engaged him to let me know what vessels I have leaving.

Q. For what? A. To let me know what vessels I have leaving New Orleans, when I have any.

Q. What vessels have you in New Orleans now that you piloted in? A. I have not any.

Q. It is, then, your intention that this man should secure for you, acting as you are outside of the association, any vessels piloted in by the association, is it not? A. I have not made any arrangement with him; I only simply asked him to represent me.

Q. Will you tell us what work he is to do? A. He is to act as agent, sir, for me.

Q. What is that agency? A. To let me know when vessels leave New Orleans, when I have any in New Orleans.

Q. That is, whether they are vessels piloted in by the association or not? A. I decline to answer that question.

Q. Will you decline to answer this question: Is it not your intention and your arrangement to, if possible, secure the pilotage of vessels out that you didn't pilot in? A. I decline to answer that.

520 Q. Is it not your intention to enter into a dishonest transaction in regard to vessels in the port here? A. No, sir.

Q. Is it not your intention to steal vessels, as it is called? A. No, sir.

Q. What? A. No, sir; not to steal vessels; I don't steal anything.

Q. I am speaking technically. It is not stealing, but it is the technical term, and it is the common term used for taking vessels out that you don't bring in. A. I decline to answer that question.

Q. You consider yourself a strictly honest man? A. Yes, sir.

Q. You would consider it strictly honest, believing yourself to be outside of the association, to get away from the association, if you could, the pilotage of vessels that you didn't pilot in? A. Yes, sir; as long as they took my vessels out, I think so.

Q. I ask you what vessels they have taken out? A. I have told you the vessels they took out belonging to me.

Q. Only one? A. Two, sir.

Q. When was that? A. One was about a month ago; one later.

Q. Then your idea of honesty is that if you believe anybody does wrong, that you have got a license to do wrong im-
521 mediately in the same line? A. No, sir; if they don't consider it wrong I have a right to do the same thing, I think.

Q. That is your idea of the observance of the pilotage law, is it? A. Yes, sir.

Q. Now, you said you sent in your resignation? A. As a member of the association.

Q. When was that? A. The latter part of August, sir.

Q. Was it before or after you took this pilotage? A. It was before, sir, that I taken the pilotage, while working in the association.

Q. I understand you to say that after you got the permission or consent of this man whose turn it was to take this vessel—what is that vessel? A. The "Jamacian."

Q. The "Jamacian" in —— A. Yes, sir; I accounted to the association for that, sir.

Q. Did you send in your resignation before that? A. No, sir.

Q. Now, what was the reason you said you gave for wanting to take the "Jamacian" in? A. I wanted to come to town, sir.

Q. Did you assign any reason for wanting to come to town? A. No, sir; I didn't assign any reason.

522 Q. When you got on board the "Jamacian" did you intend to take her pilotage and appropriate it? A. Yes, sir.

Q. That was why you wanted to go on her? A. No; that is not the reason, exactly.

Q. What was the one? It was a pecuniary reason that you wanted to go aboard of it, was it? A. I cannot say that either.

Q. Had you sent in your resignation then? A. No, sir; I accounted to the association for that pilotage.

Q. How? A. By signing the receipt and charging it to my account, sir.

Q. That is what you call accounting for it? A. Yes, sir.

Q. You think that was an honest transaction? A. Yes, sir; I do. The money was coming to me from the association.

Q. What? A. I had some money coming to me in the association, sir.

Q. I will have to ask you again to give me the best data you can of your naturalization. A. If you wait here I will go and get the papers; I can tell you then exactly. I don't remember now. I can get them in twenty minutes, sir.

Q. You can get it and leave the date here, and the reporter can fill it in. (Mr. Bernard Michel subsequently handed
523 the reporter what purported to be a certificate from the minutes of the second district court for the parish of Orleans, La., signed by Frank Pace, Jr., clerk of the court, whose signature was attested by A. L. Tissot, judge, stating that Bernard Michel was naturalized in said court on Saturday, 20th Nov., 1875, M. J. Barrett and Charles Dennis being named as the witnesses, who testified to the said Michell's residence in the United States, &c.)

Q. You have said something of Pliny Cox. How do you know what arrangement was made with Pliny Cox,—do you know of your own knowledge? A. I know he was paid one hundred and fifty dollars a month, sir.

Q. How do you know that? A. Saw it on our expense sheet.

Q. How often? A. Two or three times; I don't know exactly.

Q. Where did you see it was fifteen months? A. Because I have heard everybody speak about it, too.

Q. You don't know of your own knowledge? A. I heard everybody speak of it. Everybody knew it in the pilots' association.

Q. You don't care much for an injunction anyhow, do you?
524 A. I don't understand what you mean, sir.

Q. You are not in the habit of paying attention to them, are you? A. Oh, yes, sir; yes, sir.

Q. While under an injunction, you don't consider it worth while to stop doing that from which you were enjoined? A. I bonded all the injunctions served on me.

Q. Yes; but you don't stop breaking the injunction while you are waiting to bond it, do you? A. No, sir; I bonded the injunction, sir, since.

Q. But didn't you take out three vessels before you did? A. No, sir.

Q. Didn't you, after the injunction was served on you to enjoin you from taking out vessels of the association between the serving of the injunction and the bonding, take them out? A. No, sir; when the injunction was served on me I handed the bond right in.

Q. You also knew an appeal was taken from that, and a citation served on you? A. Yes, sir.

Q. Have you stopped since that citation was served on you? A. No, sir; bonded that the same.

Q. Bonded the appeal? A. Bonded some appeal. I don't know what it is, sir. Mr. McCaleb will tell you more about that, sir.

525 Q. Have you any association or relation, business or otherwise, with Black—J. W. Black? A. No, sir.

Q. He is not the man that you entered into an arrangement with, then? A. No, sir.

Q. Is Bob Wilson the man? A. He and I are working in partnership, sir.

Q. What pilot boat have you got? A. Got; the only boats we are owning now are the "Jennie Wilson" and the "Underwriter."

Q. They are unfortunately out of your possession, are they not, just now? A. Two sailing boats.

Q. Well, what boats are they? A. The "Nellie" and the "Ella."

Q. Well, schooners or sail-boats? A. Schooners.

Q. What is their tonnage? A. Fifty-four tons, one of them, and the other one is fifty-one.

Q. Where are they? A. They are not safe boats, sir.

Q. How long since you have been on board of either of them—of either the "Bob Wilson" or—— A. I was aboard of her about fifteen or twenty days ago.

Q. Have they not been dismantled for over a year? A. Yes, sir; I stopped aboard one of them in a squall.

Q. Have they had the sails on them for a year? A. Yes,

526 sir; the Nellie has.

Q. You wish us to understand that you and Bob Wilson are engaging those two boats for piloting? A. No, sir; only owning them.

Q. I ask you now what pilot-boats you are engaging? A. None at present.

Q. What appliances have you got entirely under your control and in your possession for boarding vessels at sea? A. Have not any at present, sir; we are not piloting outside now, sir.

Q. Then your sole business is accompanying vessels of the association they have piloted in, and piloting them out. A. No, sir; we have a boat coming from New York, sir.

Q. What boat is it? A. I don't know her name, sir.

Q. Have no sort of idea what her name is? A. No, sir; we are engaging the boat in New York; wrote on to see.

Q. Wrote on to see what you could get one for? A. Yes, sir.

Q. Have not bought it then? A. No, sir; expect to buy it.

Q. Who is the capitalist, you or Wilson? A. Neither one of us; we intend to get another party to buy it.

Q. Don't know who owns that vessel that you are en-
527 gaging? A. A man by the name of Holmes, in New York, has charge of her, sir.

Q. And until you get that vessel you intend to hang around the port of New Orleans, considering yourself outside of the association, to pilot out, to pick up, and carry out to sea for hire such vessels as the association have brought in and you can induce to take your services? A. I have not made up my mind what to do yet, sir.

Q. Well, if you should conclude to make up your mind to do that you would consider that thoroughly honest, would you? A. Yes, sir; under the circumstances.

Q. Circumstances I suppose make matters dishonest honest matters, do they not, in your opinion? A. I consider that they have taken my vessels; and I have a right to take any other vessels out.

Q. You consider a dishonest matter becomes honest under certain circumstances, occurrences? A. I don't consider that that was dishonest.

Q. You don't consider it was a dishonest manner in
528 which you got the pilotage of the "Jamacian," do you? A. No, sir; I consider that was honest, sir; I sent a receipt for the money.

Q. Wouldn't it have been a little more manly, in your opinion, to have announced your intention before you did it? A. I did announce my intention; when I drawed out, sir, I accounted for this.

Q. Not until you had the Jamacian's pilotage in your pocket? A. I gave the pilots' association a receipt for that, sir.

Finis.

Deposition of G. W. Adams.

Offered in evidence by complainant, January 9th, 1883, and mentioned as No. 14 in foregoing note of evidence.

United States Circuit Court, Fifth Judicial Circuit, Eastern District of Louisiana.

JAMES M. FLINN
versus
RICHARD FRANCIS *et al.* } No. 9282.

Appearances: Joseph P. Hornor, Esq., for complainant, J. R. Beckwith, Esq., for defendant.

529 Witness: G. W. Adams.

Testimony taken by consent, on behalf of the complainant, at the office of Joseph P. Hornor, Esq., No. 16 Carondelet street, N. O., La., Dec. 3, 1881.

Signature of witness waived.

Reported by Mark Breeden, Jr., notary and stenographer, 16 Carondelet street.

G. W. Adams, sworn by Mark Breeden, Jr., notary public, examined in chief, on behalf of complainant, by Jos. P. Hornor, Esq.

Q. Captain Adams, what is your business? A. I have charge of the dredge boat Bailey, down at Port Eads, the jetties.

Q. How long have you been employed around the jetties at the South Pass of the river? A. Little over three years, sir.

Q. What are the jetties? A. The jetties are composed of dams and dykes, at the South Pass, from the head of it through to the sea, in different places.

Q. Engineer works made there by the Government? A. Yes, sir.

Q. For what purpose? For the purpose of cutting and maintaining a ship channel.

530 Q. Through what place? A. Through the South Pass.

Q. When were these works commenced? A. In 1875.

Q. At that time what was the depth of water on the bar at South Pass? A. Seven and eight feet.

Q. What is it now? A. It is from thirty to about sixty.

Q. How long has South Pass been navigable for vessels drawing twenty feet of water? A. I don't remember the exact date, sir.

Q. About? A. A little over two years.

Q. How far do these engineering works at South Pass extend: between what places? A. About a mile above the land's end at the head of the Pass.

Q. About a mile above that? A. Yes, sir.

Q. To sea? A. No; to ———

Q. From there to sea? A. Yes, sir; from there to sea.

Q. In whose charge is that work now? A. Charge of James B. Eads.

Q. In what capacity has he charge of it? A. Through agreement of the Government.

Q. By contract with the Government? A. Yes, sir.

Q. Under whose supervision is he fulfilling that contract? A. Through Captain Heuer and the Government engineers in charge of that.

Q. Captain Heuer is captain of engineers in the United States army? A. Yes, sir.

Q. He has charge of it? A. Yes, sir.

531 Q. Whom does he represent there? A. He represents the chief of engineers at Washington.

Q. Represents the United States Government? A. Yes, sir.

Q. How long has Captain Heuer been in charge there? A. I

don't remember, sir; since immediately; ever since after Captain Brown had them; I don't remember the exact date.

Q. Can you say about? A. I don't remember.

Q. Can you say about? A. No, sir; I don't remember; over a year, I know.

Q. He had been there over a year? A. Yes, sir.

Q. Who was there previous to him? A. Captain Brown.

Q. Who was Captain Brown—another officer of the United States? A. Captain of engineers, United States army.

Q. What is the depth of the channel now in South Pass? A. Over thirty feet, sir.

Q. What was it last January? A. It was thirty feet last January.

Q. And the January before that—January of 1880? A. It has been thirty feet, and over, over two years.

Q. What is the width of the channel, captain? A. Thirty-foot channel; I don't know the exact width, sir.

Q. About what has been the width for about two years past? A. It is from three hundred probably to twenty; may not be over ten feet in the narrowest portion of it.

532 By Mr. BECKWITH:

Q. You mean three hundred and twenty to ten feet? A. Yes, sir; *in* some places it is very narrow. I don't know exactly the width, probably not over ten feet. It has been that way over two years.

By Mr. HORNOR:

Q. Are there many places where it is only ten feet? A. No, sir.

Q. How many? A. Probably only one place, it changes a good deal, sometimes.

Q. What is the average depth from that place throughout the whole channel—at that place where it is only ten feet? A. About thirty feet.

Q. What is the average depth of the channel? A. All over?

Q. At that one place? A. About thirty-one feet.

Q. Is the average? A. Yes, sir.

Q. What is the smallest, shallowest, in to the shore? About thirty or —— A. Three, I think.

Q. You say it was only ten feet inside? A. Yes, sir.

Q. I asked you, I don't know if you understood me, the average depth at that place across the river—the average depth across the river—the average depth at that place—the average depth across the river at the place where it is only ten feet wide, and thirty feet deep? A. I cannot say, sir, exactly.

Q. About? A. I should say it was about twenty-seven feet.

533 Q. Is there or not anything difficult in the approaches to the jetty work, to the channel that is there between them from the sea—I mean approaching from the sea? A. There is some mud lump approaching from the sea.

Q. At the entrance? A. Inside.

Q. Inside? A. Yes, sir.

Q. Is there anything there in those approaches rendering it necessary to have a specially skilled person to bring a steamship in?

Mr. BECKWITH objects as being immaterial, and not pertinent to any issue in the case.

A. Strangers probably would require a pilot to come in there.

Q. Strangers would require a pilot? A. Yes, sir; with a draught of water drawing over twenty feet.

Q. Would they require a pilot to take them out the South Pass? A. Drawing over twenty feet they would.

Q. They would require a pilot? A. Yes, sir.

Q. Do you mean, when you say a pilot, a branch pilot? A. I mean to say a man who is competent to pilot vessels through there. A man to be competent would have to be examined by somebody.

534 I don't mean to say it would require a branch pilot, but I mean to say it would require a competent man to pilot through there.

Q. Would a person who had been examined under the laws of the United States, and licensed as a pilot under the laws of the United States, be competent to bring vessels through those jetties.

Mr. Beckwith objects.

A. Not all of them, sir; some of them are competent.

Q. Some of them are competent? A. Yes, sir.

Q. Which ones are competent and which ones are not? A. I cannot name them all; but there is probably many who have a license from the United States Government that would not be capable of bringing a vessel through there.

Q. Does it require a knowledge of the location? A. It requires some knowledge of the pass and the mud lumps of that end.

Q. In your judgment, captain, how many times would a well-qualified sea captain have to pass up and down, in and out through these jetties, before he would be competent to bring a vessel in by himself, without a pilot?

Mr. Beckwith objects.

A. Have to pass through every week, because there is changes.

535 Q. Are not those changes marked or buoyed in the channel in some way? A. No, sir; not at all.

Q. Is there, or not, any necessity for a vessel passing in and out of these jetties through this pass to employ a branch pilot?

Mr. Beckwith objects to the question, first, as a matter of opinion; and secondly, as an inquiry of the witness as to a matter of law instead of a matter of fact.

A. No, not absolutely necessary to employ a branch pilot; it is not absolutely necessary to employ a branch pilot, but it would require a pilot that was competent to pilot in that place. I think I can do about as good piloting, pretty near as good piloting there as anybody else, and I have not got any branch.

Q. Do you know Captain Sheldon, that sometimes commands the Mary Lee? A. Yes, sir; I know him.

Q. Has he been employed down there? A. No, sir; except on tow-boats.

Q. He has been employed down there on two-boats? A. Yes, sir.

Q. In your opinion is he a competent man to pilot vessels through this pass?

536 Mr. Beckwith objects to the question as a matter of opinion in the first place, and in the second place as being an improper question in form.

A. I said I considered he was.

Q. Do you know whether there are any rules or regulations which the Government prescribed for the navigation of these jetties? A. Yes, sir; there are regulations.

Q. Who are they promulgated by?

Mr. Beckwith objects. The regulations themselves are the best evidence, if any exist.

A. By myself and Mr. Donovan, the engineer in charge down there; Capt. Eads and Capt. Heuer, and I don't know who else; there may be others.

Q. My question is, under whose authority are these regulations promulgated? A. The Secretary of War.

Q. Are these a copy of those regulations? (Hands witness Exhibit A, Dec. 3, '81.)

Mr. Beckwith objects.

Q. Are these now in force there? A. Yes, sir.

Mr. Beckwith objects, on the ground that if there are any such regulations in existence the records of the War Department will show it, and they must be proved by a properly attested copy of them.

537 Mr. Hornor offers in evidence Exhibit A, Dec. 3, '81.

Mr. Beckwith objects, on the further ground that if the War Department has ever undertaken to issue and promulgate rules of the tenor and effect of those printed in Document A, it has acted utterly and absolutely beyond the power of the War Department by any authority ever vested in the Department by its organization or any act of Congress to regulate the navigation, or to attempt to regulate the navigation, of South Pass; that the only act of Congress which ever did confer any power upon the War Department was in relation to Southwest Pass as far as Pass a L'Outre.

Q. Were there any other regulations of the Secretary of War in force prior to these? A. Not regarding South Pass, yes, sir; there was other regulations.

Q. Will you look at this paper I hold in my hand and say whether this is a portion of the former regulations there, and whether this is the order by which those regulations were revoked?

(Mr. Hornor refers to an article printed in the New Orleans *Picayune*, Tuesday morning, July 26th, 1881, headed "Branch Pilots," marked Exhibit B, Dec. 3d, 1881, and offered in evidence by Mr. Hornor.)

538 Mr. Beckwith objects, as not being the best proof of either regulations.

A. These are the regulations, a portion of the regulations that existed prior to the ones just offered in evidence, and a copy of the order revoking these prior regulations.

Mr. Beckwith states: To this Exhibit B the defendants make the same objection as they did in Document A. It is not the best proof.

Cross-examination by Mr. BECKWITH:

C. Were you familiar with the three passes of the Mississippi river, prior to any jetties being attempted through South Pass? A. Not at all times, sir.

Q. What I mean is, have you ever been through South Pass? A. Yes, sir; frequently.

Q. That was a channel from the main river, one of the channels from the main river through to the sea, was it not? A. Yes, sir.

Q. Is it more nearly in a direct line with the river at that reach than any of the other passes? It is more nearly in a direct line with that first reach of the river above the passes? That is, there is less deflection to the right or to the left than in
539 Pass a L'Outre, or Southwest Pass? A. There is a nearer, more direct line in South Pass; yes, sir.

Q. The jetties and wing dams that have been put there have been simply improvements of that pass, improving its condition as a pass? A. Yes, sir.

Q. You speak of the wing dam that was built above the pass in the main river, was it for the purpose of deflecting more current into South Pass? A. Yes, sir.

Q. That is in the body of the river? A. Yes, sir; in the body of the main river; that is a good deal; portions of it is down in South Pass, lower down.

Q. It cuts it off—South Pass off—does it not? A. Yes, sir.

Q. Its object was to put an obstruction in the main river to deflect more water through South Pass, or concentrate the current at the head? A. Yes, sir.

Q. Now, how far from that wing dam is it down to the next artificial work in the Pass. A. It is about two miles.

Q. What is that next artificial work? A. Wing dam.

Q. That was in the body of the pass, was it not? A Yes, sir.

540 For the purpose of concentrating the water at the place where it was diffused? A. Yes, sir.

Q. Were those dams built in the old pass in the way of the old pass? A. Yes, sir.

Q. It simply has the effect to improve the condition of the pass by the concentration of water there through it forces it or compels it to pass through a narrow portion of the old channel? A. Yes, sir; fine channel.

Q. How far down from that is the next artificial work? A. Grand Bayou is the next artificial work, about half way down the pass, about three miles.

Q. What is that artificial construction or work at Grand Bayou? A. Wing dams.

Q. That was for a like purpose? A. That was for the purpose of concentrating the current to deepen the pass.

Q. The pass at that point prior to the wing dam was wide? A. Yes, sir.

Q. It was done for the purpose of throwing the current into a narrow space of the pass? A. Yes, sir.

Q. Those dams were located on the bottom, were they not, of the original pass? A. Yes, sir; drove down in the mud and the sand; there is also a dam damming up Grand Bayou en-

541 tirely.

Q. The dams are located on a portion of South Pass, that was prior to that time submerged by water, are they not? A. Yes, sir.

Q. Now how far is it down to the next works? A. About five miles to East Point.

Q. Five miles from Grand Bayou to East Point? A. Yes, sir; about that.

Q. What is the nature of the artificial construction there? A. Well, it is very heavy and considerable work from there down to the sea.

Q. I ask what is the nature of the construction? A. Stone and cement and——.

Q. In what form is it? A. It is in the form of a dyke and dams.

Q. Are they parallel? A. They are parallel and cross-wise both.

Q. Are there any wing dams there? A. Yes, sir.

Q. Are they constructed upon the bottom of the pass as it existed before, for the purpose of deflecting the water of the bay into a narrow channel? A. Yes, sir.

Q. They are constructed upon the bed of the old pass as it stood for the purpose of deflecting the water from each side of the bank into a narrow pass, are they not? A. Yes, sir.

542 Q. None are upon the dry land? A. Yes, sir; it begins at the dry land, it begins at the shore.

Q. The portion of that dam which operates mechanically to converge the current into the narrow pass are of course those portions which are in the water? A. Yes, sir; the whole of it is built for that purpose.

Q. No desire to send the land in there, I suppose, of course? A. No desire to send the land into this cut; no, sir.

Q. Will you tell me how many of those wing dams there are there? A. I don't remember, sir; I don't know how many wing dams there are there; somewheres in the neighborhood of fifteen or twenty.

Q. How far apart are they? A. Some of them are probably six hundred feet, some a thousand.

Q. Those dams, I suppose, commence outside, up stream, and are diagonal—their direction is diagonally down? A. No, sir; it is square across.

Q. Now, what distance is it between the upper one of those lateral wing dams and the lower one there? What space between them? You understand? A. About two or two and a half miles between the upper one and the pass you mean, or the jetty proper?

543 Q. I mean of these dams down at East Point? A. About two and half miles may be—little [more] or little less, probably.

Q. Are those dams on both sides of the channel or all on one side? A. On both sides.

Q. Now, what is the next artificial work below the lower wing

dam? A. It is an extension of the sides of the jetties, the walls.

Q. The jetties, I suppose, in short, are an artificial extension of the bank, are they not? A. Yes, sir.

Q. It is an artificial construction? A. Yes, sir; stone, cement, and mattresses.

Q. Was it on these, the latter point, where the bank stood originally? A. Yes, sir.

Q. Now, about how far do those jetties extend, from the land to the point, to the extreme end of the jetties? A. Little over two and a half miles.

Q. Out into the open sea? A. Yes, sir.

Q. Well, they are filled up on the outside of that considerably since they were started. A. There was some land below that when they were started.

Q. Is there any land on *the* either side of the jetties extending out as far the jetties, a distance of two or three miles, each way? A. Those jetties don't extend not over one mile from the land to the end.

544 Q. Now, when you say that some persons are competent and others incompetent to take out a vessel through that pass, through South Pass as pilots, you mean that their capacity to pilot the vessel through here rests upon their intelligence and experience? A. Yes, sir; both.

Q. It is only in that relation that you answer the question? A. Yes, sir.

Q. Now, is it or not true that between the extreme sea end of the jetties and the wing dams at the head of the pass, the action of the current has been to change the location of the deep water channel in some parts of the pass, and move it about? A. Yes, sir.

Q. Those changes are going on all the time, more or less, are they not? A. Yes, sir.

Q. Is it not true that in some portion of the way from the entrance to the jetties, up to the wing dam in the main river, that the deep water channel has a tendency to become crooked, or is crooked; has curves in it? A. It has curves in it; yes, sir, it is not very shallow curves.

Q. What I mean to say is, it is not a bee-line? A. No, sir; it is not a bee-line.

Q, That is curved, changed some? A. Yes, sir.

545 Q. It is in those curves that the changes principally take place, is it not? A. Well, no, sir; it takes place as much in the straight part of that as in the curves. The channel changes in the straight part; little, not much. It does not vary; that is, it fills up at times; it is disposed to fill; but that is what keeps the dredge-boat at work, is keeping this ———— off.

Q. If you had not been at the passes, say for two months—had not passed through the channel for two months—could you afford, captain, to take a ship drawing twenty-five feet through there without having sounded? A. No, sir.

Q. Then it requires familiarity with the channel through there to keep track of the changes, so as to know where the deepest water is? A. Yes, sir; I believe I have stated that before.

Q. Now, Mr. Eads is operating, is he not, under the act of Congress by which the jetties were established? A. Yes, sir.

Q. Well, his connection with the work now is to keep a guaranteed channel, depth of water there, for a guaranteed sum of money? A. Yes, sir.

Q. For what space of time remaining under the act?
546 A. For the space of twenty years.

Q. For which he receives an annual sum, does he not? A. Yes, sir.

Q. His charge of the levees is such a charge as involves the carrying out of that contract? [His charges of the jetties is such a charge as involves the carrying out of that contract?] A. Yes, sir; he has full charge of the jetties in every way.

Q. Under what authority? A. From the acts of Congress. Full charge of the working for what time remains, so far as what remains to him.

Q. What you mean to say is he has the authority there that the act of Congress gives him; you know of no other? A. He has charge as far as the act of Congress gives him.

Q. You know of no other authority except what the act of Congress gives him? A. No, sir.

Q. You know of no authority in the engineer department, except such as is vested in them by the act of Congress? A. No, sir; I don't know of any.

Q. When you say that the War Department has promulgated rules in any way regulating the navigation of the jetties, do you mean that they have authoritatively done so? A. I consider that they did have the authority, not only of South
547 Pass, [not only of South Pass,] but of all the passes, according to that act of Congress.

Q. That is your construction? A. Yes, sir.

Q. You get it from the act of Congress? A. Yes, sir.

Q. That is your construction of it? A. Yes, sir; because they control Pass a L'Outre when they work on it just the same as they do Southwest Pass.

Q. Perhaps not by the same authority, though. Now, how long have you lived down there at the mouth of the river? A. Three years, sir.

Q. Do you know what State South Pass is in? A. I do; yes, sir.

Q. What State is it in? A. It is in Louisiana.

Q. And it is in the equatic parish of Plaquemines? A. Yes, sir.

Redirect by Mr. HORNOR:

Q. You have stated to Mr. Beckwith that if you had been away, absent from the jetties for two months, that you could not take a twenty-five foot ship through there? A. I say I would not attempt it.

Q. Without sounding? Would you do it and sound, or could you do it by sounding? A. With a sounding? We have
548 to determine that. I could not say positively as to what might take place in two months.

Q. Could you do it by sounding if the water was there? A. Oh, certainly; some tugs though go through there, and never sounds, I think. George Osgood, one of the branch pilots, was in there, and undertook to take a ship out without sounding, and took her where no water was for her by about two feet.

By Mr. BECKWITH:

Q. Did you see her? A. Yes, sir.

By Mr. HORNOR:

Q. You say he was one of the branch pilots? A. Yes, sir.

Q. How did he happen to do that? A. He was a branch pilot, and had a right to take a ship down there.

Q. He was taking this ship to sea when he ran her aground? A. Yes, sir; and went down the west channel instead of going down the east channel.

By Mr. BECKWITH:

Q. That was because it was so easy to take a ship through? A. No, sir; because he didn't take the proper precautions to sound, for to see, to know.

Q. He got ashore because it was so very easy to go through there? A. I don't know whether he ever inquired whether
549 there was water enough or not.

Q. What ship was it? A. It was the steamship Agasofia.

Q. What Osgood was that? A. George.

Q. How long ago was it? A. I don't remember, sir; but I can refer to my memorandums and give you the exact date.

By Mr. HORNOR:

Q. About? A. About is so indefinite.

Q. It is good enough for us? A. Within the last three years; I don't remember the date.

Q. Do you know of any other ship being run ashore by branch pilots down there?

Mr. Beckwith objects.

A. I don't care about mentioning them.

Q. But we do? A. I know ships have run aground. About all of the branch pilots there except Captain Francis, and Captain Redmond. Captain Francis, I never knew him to run aground, but I have Captain Redmond; I don't know any pilot that is not liable to run a ship ashore at some time or other.

Q. Going through those jetties? A. Yes, sir; I don't consider it an impossibility.

Q. Don't you consider that any pilot who runs his vessel
550 ashore passing through those jetties, does so by being careless.

Mr. Beckwith objects.

A. Not in all instances, sir; sometimes a ship handles very badly, and cannot be controlled. It is occasionally that it is very gross negligence, but not always.

Deposition of Wm. H. Leppert.

Offered in evidence by Complainant January 9th, 1883, and mention as No. 15 in the foregoing note of evidence.

Wm. H. Leppert sworn by Mark Breeden, Jr., notary public. Examined in chief by Jos. P. Hornor, Esq., on behalf of complainants.

Q. What is your business, Captain Leppert? A. Mariner.

Q. How long have you been a mariner? A. 44 years.

Q. Have you ever been a master of a vessel? A. Yes, sir.

Q. How long have you been a master of a vessel? The first time I took charge of a—1853; master 25 years.

Q. Have you commanded both sail and steam vessels? A. Yes, sir.

Q. Have you ever traded to this port as a master of a vessel? A. Yes, sir.

Q. For how many years? A. Since 1861.

551 Q. Have you been trading regularly since 1861? A. Not regularly; during the war I ran regularly.

Q. Since then? A. Since then occasionally; yes, sir.

Q. How many voyages have you made to this port since the jetties have been established at South Pass? A. About one dozen, I think.

Q. About a dozen? A. Yes, sir.

Q. Do you know the condition in which the works of the jetties were in January of this year—January, 1881? A. I know what the condition of the works were in December.

Q. In December of 1880? A. Yes, sir.

Q. Yes, sir; that is the same thing. At that time, Captain, was it necessary for vessels entering the jetties or leaving them to have a branch pilot?

Mr. Beckwith objects.

A. At that time they had opposition—tow boats. A tow boat would come up and pull a vessel in or out.

Q. I want you to answer my question. Was there any necessity at that time for vessels coming in or going out of the jetties to have a branch pilot? Do you know? A. Not absolutely necessary.

Q. Not absolutely necessary? A. No, sir.

552 Q. Why not? For this reason: that the tow boats were doing all the work.

Q. How do you mean by doing all the work? A. For instance, in going out, a vessel being outward bound should anchor at the head of the pass, a tow boat would come up to her and take her in tow and pull her down, and the pilot would be on board.

Q. What pilot? A. The branch pilot.

Q. Be on board of what? A. Of the vessel.

Q. Well? A. Well, we would follow the boat—follow the towboat.

Q. Well? A. When we got to the end of the jetties they would stop there—stopped a good deal there—and the pilot would step over the side of the vessel.

Q. The pilot would? A. Yes, sir.

Q. Do I understand you to say that a ship going down the river towards the sea would take on a branch pilot at the head of the pass? A. Sometimes at the head of the pass and sometimes right in the pass.

Q. Whereabouts do you mean when you say right in the pass? A. In the pass a little above, a little above Port Eads proper, where the superintendent resides.

Q. Right above Port Eads proper, where the superintendent resides? Yes, sir.

553 Q. How far was——? A. It would not be more than three miles.

Q. Now, I understand you to say that after the vessel had passed the jetties the tow boat would come alongside? A. Yes, sir.

Q. And the pilot would go ashore? A. Yes, sir.

Q. This branch pilot? A. Yes, sir.

Q. What was the duty, occupation, of that branch pilot from thd time he came on board of that vessel going to sea until he left her, the vessel following the tow boat, as you say? What did this branch pilot have to do? A. He came forward, heaved

the anchor up, would go forward on the forecastle, and then come aft and attend to the steering, whilst the mate and the crew would be getting the anchor up to the cat's head.

Q. You say the vessel was under way, that the vessel was following the tow boat, and it was this pilot towing while the vessel was following the tow boat? A. Paying attention to the steering, following the boat.

Q. Did he exercise any control over the tow boat? A. That I could not say, sir.

Q. Did he on any ship you were ever on? A. I never
554 heard him giving orders to the tow boats.

Q. The tow boat had a pilot of her own? A. Every tow boat has to have a pilot and license, I think. Is it not so, Mr. Black? (Question addressed to Mr. Black.)

Q. Now, was there or not any necessity for such a vessel going down from the head of the pass to the sea behind a tow boat—any necessity for her to have a branch pilot aboard?

Mr. Beckwith objects.

Q. In other words, could she not just as well follow the tow boat without one as with one? A. I would say that a stranger might not—might object to it; a man acquainted there, no.

Q. What good would a branch pilot on board of a ship following a tow boat down through these jetties do? What good would he be to a stranger? A. Well, no more than the captain in case of an accident; the captain would say he had a pilot on board.

Q. The vessel? A. I presume so.

Q. When a vessel comes in from sea toward the jetties, where does the branch pilot meet her to board her? A. They have heretofore—they used to go—well off shore.

Q. What do you mean by heretofore? A. Say within the time.

555 Q. Before the jetties were finished? A. No, sir; after they were finished. Before the jetties were finished when there was any opposition there they would go off shore; when they had any opposition; when the pilots had opposition I have seen them off in little bits of skiffs.

Q. Do you mean when they had opposition? A. Yes, sir.

Q. Then they went off shore? A. Yes, sir.

Q. How far off shore? A. I have seen them 25 miles off.

Q. Since the jetties were finished and the pilots have no opposition, where do they board vessels coming in? A. Well, I can only speak for myself.

Q. That is all I want you to speak for. A. I have had them three or four miles off and inside of——

Q. Inside of that? A. Inside of automatic buoy.

Q. Where is automatic buoy? A. I think it is about a mile and a half or two miles outside of the jetties.

Q. A mile and a half outside of the jetties? A. About that. I won't be certain as to the distance.

Q. He gets aboard there; where does the vessel take the tow boat? A. If they have fair wind they generally sail in.

Q. To what place? A. Into Port Eads.

556 Q. As far as Port Eads? A. Yes, sir.

Q. How long does the pilot stay on board of that vessel? A. Underfavorable circumstances, if they have a fair wind, as long as to come from the buoy; I think one hour and a half.

Q. One hour and a half? A. Yes, sir; or two hours.

Q. To what point do they bring her? A. According as the vessel has ballast. If they wish to discharge their ballast they leave them wherever the superintendent orders the vessel to be put. Under ordinary circumstances they put them a little ways above the superintendent's house.

Q. At Port Eads? A. They are scattered along.

Q. At Port Eads? A. Yes, sir; they are scattered along for two or three miles.

Q. They don't go with them to the head of the pass, then? A. I have had one man up with me to the head of the pass.

Q. Only one? A. Only one that I can remember.

Q. You say you have been through there how many times? A. I have been through there a dozen times.

Cross-examination by Mr. BECKWITH:

Q. You have always commanded a light draft vessel,
557 have you not? A. Well, seventeen feet is the deepest.

Q. What vessels have you commanded in the last four or five years, since the jetties were built? A. The barkentine Albert Shultz.

Q. Did you ever come through without paying pilotage to some boat? A. I never did, sir; I did before the war.

Q. But I mean through the jetties? A. No, sir.

Q. If not to the branch pilot, whom did you pay it to? A. Paid it to the pilot who boarded me. I don't know whether he was a branch pilot or not.

Q. You never undertook to come through there without somebody who claimed to be a pilot on board, did you? A. No, sir; I have not come through there. It is compulsory, the pilotage.

Q. When you say vessels were lying down at Eadsport, you mean the vessels that have ballast to discharge were lying there? A. Some vessels have ballast to discharge; others come in there for orders; at times they are in there waiting for tow boats to take them up.

Q. You only speak in reference to your own vessel. You don't know of anything in regard to any others? A. None more than what I have seen, sir.

558 *Deposition of Simon R. Ulmer.*

Offered in evidence by complainant, January 9th, 1883, and mentioned as No. 16 in foregoing note of evidence.

Simon R. Ulmer, sworn by Mark Breeden, Jr., notary public, examined in chief, on behalf of complainant, by Mr. Hornor.

Q. Captain, what is your business? A. Mariner, ship-master.

Q. How long have you been a ship-master? A. I have been a ship-master 31 years.

Q. How long have you been trading to this port? A. Of and on ever since 1843.

Q. How many voyages have you made here through the jetties of the South Pass? A. I have made, now, I think, five. I came here two years ago last April, on the ship Serenac, two years ago on the 15th of April, and went to sea on the 28th.

Q. When did you arrive here last? A. I arrived here on the first of Cecember.

Q. Of this present month? A. Yes, sir.

Q. What are you in command of now? A. I am in command of the ship Serenac.

559 Q. Now, captain, when you approach the jetties, coming to the city of New Orleans, whereabouts are you boarded, usually, by the branch pilots? A. Well, I have been boarded this time about four miles down.

Q. About four miles from the jetties? A. Yes, sir; and I have come to an anchor out of the pass, that is, in the evening, off the jetties, and didn't get a pilot until morning.

Q. And took a pilot in the morning? A. Took a pilot and came in in the morning.

Q. When he got on board where did he leave you? A. He left me just about the light-house, probably.

Q. How far is that from the end of the jetties? A. I should judge four miles; it was a long distance.

Q. How long would the pilot be aboard of you? A. The longest I—sometimes an hour and sometimes an hour and a half.

Q. What use was he; how long the longest time? A. About one hour and a half.

Q. How long would be the greatest, not the longest time? A. This time he was aboard from Saturday at 5 o'clock until Monday morning at nine.

Q. How long was he aboard your boat coming through the jetties? A. About one hour; that is, commencing where
560 the buoy marks; it is usually in there.

Q. Did you ever go through with a tow boat? A. Yes, sir; and I have sailed in once or twice.

Q. When you go through there with a tow boat from the outside, what good is a branch pilot to you? A. I cannot see any.

Q. You cannot see any? A. No, sir.

Mr. Beckwith objects.

Q. Why do you take one? A. Because it is compulsory by law. You have either got to take him or pay.

Q. Therefore you take him? A. Yes, sir.

Q. Now, sir, you say at one time you sailed in? A. Yes, sir.

Q. What good was a branch pilot on board of your vessel, then? A. Then she was under canvass, and, of course, I didn't know the depth of water.

Q. Then, he is some use? A. Yes, sir.

Q. When you have a tow boat he is no use? A. With a tow boat he is no use, better without it.

Q. When you come down the river to go to sea through the jetties, where does your branch pilot come aboard? A. I have taken him off the light house on the boat, and he has come aboard at the head of the pass.

Q. Sometimes at the light house, and sometimes at the
561 head of the pass? Yes, sir.

Q. What is the distance between the light house and the head of the pass? A. I cannot tell you the distance; I judge eight or ten miles; I don't know the distance.

Q. How far would he go with you after he got on board? A. When we were bound out?

Q. Yes, sir? A. He would go just off the end of the jetties, just off the end of the jetties to what he calls the bar.

Q. And take his leave there? A. Take his leave there.

Q. Do you take a pilot always to go down the river to go to sea—I mean do you take a tow boat? A. I take a tow boat always; yes, sir.

Q. When you have a tow boat going down the river through the jetties, what good is a branch pilot? A. I cannot see any.

Q. Why do you take one? A. Because the law compels me to, or pay him. It is compulsory.

Q. Now, sir, do you, when you go down the river, take a river pilot? A. No, sir.

Q. You don't need any? A. Don't need any, have got a tow boat.

Q. The tow boat is sufficient? A. Yes, sir.

Q. Suppose you sail down the river to go to sea?
562 A. I should go without a pilot until I got down to where the pilot station is.

Q. Then you would take a branch pilot? A. Yes, sir.

Q. Is it necessary to have a branch pilot aboard to go to sea through the jetties if you don't have a tow-boat? A. I should prefer to take one because in case of an accident it would clear me from the underwriter.

Q. Is that the only reason? Yes, sir.

Q. Could you navigate your vessel just as well under sail through the jetties without a branch pilot? A. No, sir; because the river is liable to shift, and I should have need, I would take him on that account.

Q. Suppose you had a river pilot and you were going to sea under sail——

Mr. Beckwith objects.

Q. Would it be then necessary to have a branch pilot to take you through the jetties? A. If the river pilot understood the depth of the river through the jetties it would not; all that is required is a man who knows the depth of the water.

Q. You have traded to this port before the jetties were built? A. Yes, sir.

563 Q. At that time, before the jetties were built, where were the branch pilots in the habit of boarding your ship? A. Sometimes ten miles at sea; that was before the war, and when just after the port was opened.

Q. How did it happen they came out so far to meet you? A. I presume there was opposition.

Q. There was opposition? A. Yes, sir.

Q. Now there is no opposition? A. Now, as far as I know, there is none.

Cross-examination by Mr. BECKWITH:

Q. How much draft is your vessel? A. The first voyage I went out she drew nineteen feet four inches.

Q. How much coming in? A. Drew seventeen; this time been drawing fourteen and a half in ballast.

Q. What did you stop at the light-house for if not in ballast? A. Waiting for the boats to make up a tow to come up the river; they stop there generally and make up their tow.

Q. You can go in and out of any port in the world if you have enough water? A. Yes, sir.

Q. No trouble about that? A. No, sir; if you understand the tide.

564 Q. Would you have no hesitation in going to sea with a tow-boat, with a tow-boat man who had never been in port here before? A. Have no objection.

Q. Would you take a green tow boat man, is the question? A. Yes, sir.

Q. Whether he knew the channel or not? A. For that part

I would take him if he didn't know the channel; I would withdraw that.

Q. Then, if a man offered to take you out the jetties, if you knew he was green? A. I should not want to take him.

Q. You would have somebody to take you who is competent? A. Yes, sir.

Q. So I understand some direction * [* Should not this be discretion?] is necessary to take a vessel through there safely? A. Yes, sir; I don't dispute that.

Q. How is the sounding out the jetties? A. I never sounded there.

Q. Ever look at the chart? A. By my chart the soundings are deep close, apparently close, to the jetties.

Q. You could run within one mile and a half without a pilot? A. I have come to an anchor there.

Q. You did it? A. Because there were five fathoms, I did; I sounded as I came in, same as a prudent man should.

565 Q. After you once get over the bar there, at the end of the jetties, it is good water, is it not? A. Plenty of water.

Q. When a pilot is on board of your vessel he has charge of it? A. Yes, sir; he has control of the ship as far as the guiding of her.

Q. How are vessels ordinarily towed down through there; by hawser or alongside? A. I have been towed alongside and by hawser. The steamer would always tow in the same way, ahead.

Q. Did you ever sound your way from the light-house up to the head of the pass? A. I never did, sir.

Q. You either depended—— A. I depended on the tow boat; yes, sir.

Deposition of John Conner.

Offered in evidence by complainant, January 9th, 1883, and mentioned as No. 17 in the foregoing note of evidence.

John Conner, sworn by Mark Breeden, jr., notary public, examined in chief, on behalf of complainant by Mr. Hornor:

Q, What is your occupation, Captain Conner? A. Pilot, sir.

566 Q. What kind of a pilot? A. River pilot.

Q. River pilot? A. Yes, sir.

Q. Do you hold a license of any kind? A. Yes, sir.

Q. What is it? A. I hold a United States commission as a pilot from New Orleans to sea.

Q. To the lower part of the Mississippi river? A. Yes, sir.

Q. Who is that commission or license issued to you by? A. By the United States Government.

Q. Under the laws of the United States? A. By the local inspection under the laws of the United States.

Q. How long have you been engaged in the business of pilotage down the river to sea? A. Since 1855.

Q. You are familiar, then, with the river? A. Yes, sir.

Q. Are you familiar with the jetty works built by Captain Eads at the South Pass? A. Yes, sir.

Q. You are familiar with them? A. Yes, sir.

Q. Could you describe those works to me; tell me what they are; what they consist of? A. They consist of jetty works from the land's end to deep water.

Q. And there are improvements above? A. Yes, sir.

Q. And above the head of the pass? A. There are jetty
567 works at the head of the pass.

Q. What do they consist of? A. Piling and mattresses and rocks.

Q. What was the depth of water at the bar at South Pass before these jetty works were commenced? A. Seven and a half feet.

Q. What has been the effect of these jetty works? A. The effect of deepening the channel.

Q. From the head of the pass to sea? A. Yes, sir.

Q. To what extent? A. Well, to deepening it from seven and a half to thirty feet. I don't know that there is a uniform depth of thirty feet from the main river to sea through the jetties.

Q. But there is very near it, is there not? A. Yes, sir.

Q. More than twenty-five? A. Oh, yes, sir.

Q. In whose charge are these jetty works? A. They are supposed to be in charge of the Secretary of War.

Q. Who represents him down there? A. Well, there is a United States engineer down there.

Q. Captain Heuer? A. Yes, sir.

Q. What kind of vessels are you employed in towing—in piloting I mean? A. Steamers principally, sir.

Q. Steamships? A. Yes, sir; steamships and tow-boats,
568 and anything that comes along; principally tow-boats.

Q. Have you ever steered any steamships through those jetties? A. Yes, sir; taken them from the city to the light-house.

Q. Tow boats? A. Yes, sir; tow boats from the city to sea.

Q. From city to sea? A. Yes, sir.

Q. You say you have been engaged on tow boats? Yes, sir.

Q. Which went through those jetties under your supervision as a pilot? A. Yes, sir.

Q. Often? A. Very often.

Q. How often? A. Sometimes four or five times in the course of twenty-four hours.

Q. For how long; what length of time? A. Well, during the business season of the year.

Q. Now, are you familiar or not with the branch pilots down there? A. Yes, sir; I know several of them.

Q. Are you familiar with their habits of boarding vessels? A. Yes, sir.

Q. At what place are the branch pilots down there in the habit of boarding vessels inward bound? A. I seen them board them outside the land, and I have seen them board them close to the bar.

Q. How far outside the land? A. Well, I have seen them board them 25 or 30 miles off sometimes.

569 Q. Since the jetties been there? A. Yes, sir,

Q. Did they do that often? A. I don't know that they did. Then there was strong opposition amongst the pilots, and they cruised off shore after vessels.

Q. When was that? A. Previous to their consolidation; a couple of years ago, I believe. Since then they have got a steam pilot station at the end of the jetties, and when a vessel will heave in sight they will steam up, you see, to board the vessel.

Q. They don't go out to look for her? A. Not as a general thing.

Q. Do they use any other vessels—these branch pilots—except those steamboats? A. Yes, sir; they have had sailing pilot boats.

Q. Do they use those now? A. Not that I am aware of.

Q. How long since they stopped using them—those sailing pilot boats? A. I suppose something like a year, probably.

Q. Now, Captain Conner, if a vessel coming to this port through those jetties, inward bound, is in charge of a tow boat, what use is a branch pilot on board of her?

Mr. Beckwith objects.

570 Q. Well, if the vessel will steer after the boat she is sure to come in.

Q. I ask you whether, if she has a tow boat, what use is a branch pilot on board of her? A. That would be altogether at the discretion of the captain of the vessel.

Q. If he takes one what use would he be? A. To steer after the vessel.

Q. Would he steer after the tow boat any better than anybody else? A. The captain of the vessel could do so. If a man has sense enough to bring a vessel from Liverpool, or any other foreign port, he certainly would have no——

Q. Then there is no real necessity for taking a branch pilot when a ship has a tow boat? A. If the ship will steer after the towboat, the tow boat will bring her in.

Q. Whether she has a branch pilot or not? A. Yes, sir.

Q. Where do these branch pilots usually board a vessel that is outward bound? A. At the head of the pass.

Q. They usually get on board there? A. Yes, sir.

Q. Does the river pilot leave her then? A. No, sir.

Q. What does he do? A. He is aboard of his tow boat.

Q. How long does the branch pilot stay on board of a vessel outward bound from the time he boards her at the head of
571 the pass? A. From the time she leaves the head of the pass until she gets to sea, outsides of the jetties.

Q. How far is that? A. It is probably 13 miles—twelve or thirteen.

Q. How long does it usually take to run out? A. A couple of hours after the anchor is up.

Q. Is there any use—is there or not any use of a branch pilot on board of a ship outward bound, going to sea, through those jetties, when she has a tow boat?

Mr. Beckwith objects.

A. Well, if the tow boat—if the ship will steer after the tow boat, she will take her through?

Q. Whether she has a branch pilot on her or not? A. Yes, sir.

Cross-examination by Mr. BECKWITH:

Q. You mean to say that, if the tow boat ran high and dry on the bank, that the boat, that the vessel, would follow her high and dry, I suppose? A. I don't see any trouble of the towboat running high and dry.

Q. So when the boat got in shoal water? A. But that is not the pilot's duty to let her go in shoal water.

Q. We are talking about tow boats now. I suppose a man going through there perfectly green, never having been
572 through there, would be certain to take a 25-foot ship through without any trouble? A. No, sir.

Q. In other words, somebody has got to gauge through there? A. Well, the pilot of the tow-boat know the channel.

Q. Then you mean to say that a man can pilot a ship through on a tow-boat, if the ship will follow the tow-boat, if the pilot is competent to pilot that draft of water through there? A. Yes, sir.

Q. If the master or pilot of the tow-boat was incompetent to go through there he would probably get both the boat and the ship in trouble? A. If the pilot and master is incompetent.

Q. If the pilot and master of the tow-boat was incompetent he would be apt to take the ship on— A. He would be as likely to hit it as to miss it.

Q. Matter of luck and not skill? A. I don't know what you call it.

Q. Is there not shifting or changes in the channel between the pass and the light-house in the jetties? A. Yes, sir.

Q. Going on all the time, more or less? A. Yes, sir; there is more or less shifting.

Q. Well, you say you have a license from the United States? A. Yes, sir.

Q. You have no other license that the inspectors are
573 authorized to issue, have you? A. No, sir.

Q. That is only a license to pilot American vessels, wholly or in part, by steam? A. That is a license; it don't specify what I am to pilot.

Q. But the law does? A. Yes, sir.

Q. You can pilot British ships without a license, without following any law of the United States? A. I consider that I have as good a right to pilot a British vessel through the jetties as I have to pilot her from the city to the jetties.

Q. Do you claim any right to pilot British vessels under the authority of this United States license? A. Well, we have no other license, we pilot British vessels.

Q. Do you claim that fact gives you any right from the Government to pilot British vessels? A. It don't say that I shall not pilot British vessels.

Q. Did you ever read the law? A. Yes, sir.

Q. You know, then, it only refers to American vessels, don't you? A. My license don't say anything about what vessels I shall pilot, sir.

Q. Of course it don't do it, it simply confers on you what authority the act of Congress confers on the inspectors to
574 grant, that is all. I suppose you understand that don't you? A. Yes, sir.

Q. How do you know there is thirty feet of water all through the pass? A. Well, I don't think there is thirty-one feet all the way through.

Q. You would not like to take a thirty-one foot ship through there, would you? A. No, sir; I would not.

Q. Is there not a portion down there, about half way down from the jetties, from the head of the pass to the light-house, where it is wide? A. Yes, sir.

Q. A broad sheet of water there? A. Well, it is wider at Grand Bayou than it is at any other part of the pass.

Q. Trouble there with the channel sometimes? A. There is jetty work at the mouth of Grand Bayou; some spiling.

Q. I ask you if there is any trouble in the changing of the bottom there? A. Well, immediately below Grand Bayou there is little.

Q. All that jetty work is in the river, except that that goes out to sea—in the river in the pass? A. There is jetty work at the head of the pass and immediately below. There is jetty work at Grand Bayou and at the sea water out.

575 Q. Do you mean by jetty works there are —. A. I mean works been put up there by the jetty company.

Q. They are all in the water? A. Some at the upper end of the pass is on land; the land is mud from rain though.

Q. They were built in the water? A. Yes, sir.

Q. The pass was there before they were built? A. Yes, sir.

Q. South Pass, from the head of the pass down, is in this State, is it not? A. I don't know, I am sure, what State it is in. It is supposed to be in the State of Louisiana. I have heard that it was said that it was in the State of Mississippi, and I don't know whether it is or not; but I have heard it said, but not from any reliable source, that one-half of that pass was in the State of Mississippi.

Q. You don't consider it a very reliable, geographically, source you got it from? A. No, sir; men like myself, that don't know anything more about it than I do.

576 *Deposition of Captain Wm. H. Heuer.*

Offered in evidence by complainant January 9th, 1883, and mentioned as No. 18 in foregoing note of evidence.

United States Circuit Court, Fifth Judicial Circuit, Eastern District of Louisiana.

JAMES M. FLINN
versus
RICHARD FRANCIS. } No. 9282.

Appearances: Joseph P. Horner, esq., for complainant; J. R. Beckwith, esq., for defendant.

Witnesses: Captain Wm. H. Heuer, Captain George A. Sheldon.

Testimony taken by consent, on behalf of complainant at the office of Joseph P. Hornor, Esq., New Orleans, La., December 14th, 1881.

Reported by Mark Breeden, Jr., notary and stenographer, 16 Carondelet street, New Orleans, La.

577 Captain Wm. H. Heuer, sworn by Mark Breeden, Jr., notary public, examined in chief, on behalf of complainants, by Mr. Hornor:

Q. Will you state your business? A. Captain, Corps of Engineers, U. S. Army.

Q. Have you had any connection with the Government works

at the South Pass of the Miss. river? A. I have; I am the inspector of that work.

Q. You are the inspector of that work? A. Yes, sir.

Q. They are under your charge in your official capacity as an officer of the U. S. Army? A. They are; yes, sir.

Q. By whom are you detailed for that work—duty? A. The Secretary of War.

Q. How long have you been in charge of the works at the South Pass? A. About a year and a half.

Q. You are familiar with the jetties there? A. Yes, sir.

Q. Will you please describe the jetties, the engineer works of the pass known as the jetties? A. The jetties consist of two parallel walls, which are approximately two miles in length, built of brush and stone, about one thousand feet apart, through
578 which the waters of the South Pass flow; that is a rough general description.

Q. For what purpose are they? A. To give a greater depth; to render the South Pass navigable.

Q. For the purpose of cutting and maintaining a ship channel? A. Yes, sir.

Q. Through the South Pass? A. Yes, sir.

Q. Do you remember when those works were commenced? A. I cannot give the date of their commencement. I can give the date of the contract; the date of the law authorizing it.

Q. What was that? A. March 3rd, 1875.

Q. They were commenced shortly afterwards? A. Yes, sir.

Q. What was the depth of the water on the bar at the South Pass at that time? A. About eight feet.

Q. What is it now? A. A little over thirty feet.

Q. Where do the Government works commence at the South Pass? A. At the head of the pass.

Q. And end at the sea? A. And end in the Gulf.

Q. How far distant? A. About twelve miles.

Q. For vessels drawing what depth of water is South Pass now navigable? A. Twenty-five feet.

Q. How long has it been navigable for vessels drawing twenty-five feet of water? A. Upwards of a year. Better
579 qualify that about telling you the depth of water in the pass, because when I say twenty-five feet a vessel can navigate, I mean to say there is twenty-six feet of water in the pass.

Q. Certainly a vessel drawing twenty-five feet can navigate in twenty-six feet? A. I should think so; yes, sir.

Q. Who is doing the work down there? A. Captain James B. Eads and his associates.

Q. Under whose direction and supervision? A. Well, under his own.

Q. Are you not the supervisor? A. No, sir.

Q. You are simply the inspector of the work? A. That is all.

Q. You have no orders to give to Captain Eads? A. None at all.

Q. Captain, what is the nature of the navigation through that pass now? A. Navigable by——

Q. I mean is it easy or difficult? A. Easy.

Q. Is there or is there not any necessity for ships coming in and going out of that South Pass to have a branch pilot?

(Objected to by Mr. Beckwith.) (Objected to by Mr. Beckwith as perfectly irrelevant to any issues in this case, not con-
580 nected with any matter at issue in this case.)

A. Not according to the United States laws.

Q. Well, according to the fact, captain, of the existence of that channel, according to the fact, leaving the laws out of the question, according to the fact, according to the existence of that channel through that pass, is there or not any necessity for a vessel drawing twenty-five feet of water or less to take a branch pilot to come in? A. I think not.

Q. Well, in your opinion, from your knowledge of the state of the works at the South Pass, was it or not in the power of a person competent to pilot vessels under the laws of the United States, under the inspection laws of the United States, to bring a vessel in and out of that pass? (Objected to by Mr. Beckwith for the same reason as above.) A. I think any person who knew the channel could have come through.

Q. How long has it been that way, captain? A. Over two years.

Q. Captain, will you look at this paper that is marked Exhibit A, December 3rd, 1881, and state whether this is the order, this is a copy of the rules regulating the navigation of the
581 South Pass of the Mississippi river at that time A. Yes, sir. (The question was objected to by Mr. Beckwith before the answer was given, for the reason that if any such rules exist by competent authority they should be established by the original.)

Q. How long have these regulations in Exhibit A been in existence—in force? A. Since September 5th, 1881.

Q. Now look at Exhibit B, of December 3rd, 1881, and state whether those were the regulations that existed prior to the regulations marked Exhibit A? A. It is an extract. (Mr. Beckwith states the answer taken subject to the same objection.)

Q. Look at this Exhibit B, and say whether this Exhibit B contains the order repealing the former regulations? (Objected to by Mr. Beckwith for the reason that it is not the proper method to prove the order if it exists.) A. It is.

By Mr. Beckwith: Will you note that the defendant objected

to each and every question propounded, and to each and every answer given by the witness, touching matters not at issue
582 in this case, and not responsive to any issues made in the pleadings, and in no manner pertinent to any inquiry involved in the case.

Cross-examination by Mr. BECKWITH:

Q. Captain, will you state now the full measure of your duty to which you are commissioned by the War Department, at the mouth of the Mississippi river? A. To report the depth of water at South Pass, and any improvement and changes that may occur there.

Q. Am I not correct in stating that every improvement in the way of wing-dam, artificial work, or jetty, in the South Pass, is placed there at the instance, direction, and is under the control of Eads and his associates? A. It is.

Q. The only relation that the Government holds to those improvements, then, is a liability, under a contract, to make certain payments in the event of a certain depth of water, or depths of water, being reached in the channel? A. Reached and maintained.

Q. The method and means, and devices, by which that
583 depth of water is reached and maintained, or the contrivances for that, are at the responsibility of Eads and his associates, are they not? A. Yes, sir.

Q. The Government directly derives nothing, or supplies nothing? A. Nothing whatever.

Q. In the way of material; so that the work, then, practically of deepening the channel, maintaining, and carrying it on, are works of Eads and his associates? A. They are.

Q. Will you state whether or not the twenty-six feet of water you spoke of as being in the channel there, have been reached by the direct action of the current of the river, as confined by the artificial work alone? A. It has not.

Q. The Mississippi river has been aided? A. By dredging.

Q. By dredging? A. Yes, sir.

Q. By whom is that dredging done? A. By Eads and his associates.

Q. Does that dredging, the device resorted to, aid the action of the current—the abrasive action of the current in deepening the water there? A. Yes, sir.

Q. In your opinion, does it—does the deep water—result
584 in any measure, from dredging? A. Yes, sir; it does.

Q. Would the result be reached, you think, in time if only the abrasive action of the current of the river was permitted to act? A. No, probably not.

Q. That dredging then is——. A. Auxiliary to the jetties.

Q. Is conducted and carried on at the expense and risk and direction of Eads and his associates, is it not? A. It is.

Q. The Government does none of it? A. No, sir.

Q. Well, what is the first work, artificial work, or contrivance of Eads to effect or aid in the purpose of deepening the current, commencing at the upper end of the pass? A. It consists of dams, dykes, and jetties, to force more water into South Pass than would flow through had these not been constructed.

Q. The court is not an engineer; will you explain the difference between a dyke and a dam? A. A dam shuts off all water as a rule flowing through a place where no dam before existed; a dyke generally is less high than a dam; a jetty generally
585 is a combination of materials parallel or nearly so with the current.

Q. You would call a structure then a dyke if the top of it was submerged? A. Yes, sir.

Q. Well, in what sense were there any dams at the head of the pass? A. At the head of the pass, near the head of the pass, there is a dam built somewhere near the head of Goat Island, I think.

Q. The current running around it? A. I think so, on one side.

Q. Well, now how far down from the head of the pass do these works extend? A. Where the dams and dykes and——

Q. Yes, sir. A. Well, they are immediately at the head of the pass, and there is some five miles down the pass.

Q. Are there any between the head of the pass and those five miles below? A. There are.

Q. What other works intervene? A. Two or three lattice-work dykes recently constructed.

Q. It acts, it operates to do what; indicate the propriety of the construction there in the channel? Does it increase or decrease the amount of flow of water at any point? A. It
586 narrows the channel, causing an increased velocity of the current, thereby producing a scour.

Q. How wide is the channel there, at that point, where it has been narrowed by the recent works? A. Seven hundred feet, or less.

Q. You don't mean that they are much less, not to be more than one foot wide? A. Well, I cannot give you that without maps, and I have no maps with me. I say if you want the length of those dykes I will give it you approximately.

Q. I don't care particularly about the length of the dykes. Now, five miles below the head of the pass terminate the upper series of works, as I understand? A. Yes, sir; well, the upper series of works really terminate within half a mile below the head of the pass.

Q. These five miles below is of what nature? A. That constitutes a dam.

Q. How long has that dam been built at the five miles point? A. About four years.

Q. I understand you to say that some work had been recent there? A. There was two dams put in within the last few months. Two or three dams, I don't know which.

587 Q. Which are the recent dams? A. Between the head of the pass and the dam five miles below the head.

Q. I asked you, or intended to ask you, in reference to those that you have stated have been put in about four month long. They had been put in where the channel shoaled, from the shoaling of the water? A. It had narrowed the channel in; narrowed in width, and probably shoaled also.

Q. Now, what works, artificial works, have been made between the works five miles below the head of the pass and the shore end of the jetties? A. None.

Q. What is the character of the pass between the *there* lower works, five miles from the head of the head of the pass, and the shore end of the jetties? A. What is the character of the pass?

Q. Yes, sir; is it narrow or wide? A. It is an average width of seven hundred and fifty feet, varying not much from that average.

Q. I ask you in reference to the pass, not the channel? A. I am giving you the pass.

Q. Is there twenty-six feet of water from shore to shore? A. No, sir.

588 Q. How wide a space carries a sounding of twenty-six feet? A. One hundred and sixty feet in width.

Q. Exactly? A. That is the narrowest.

Q. How wide is the widest? A. I cannot give you the widest; I don't know.

Q. Is it not very considerably wider that? A. Probably three hundred feet in places.

Q. That is carried down, then, to the shore end of the jetties? A. One hundred and sixty feet is—the narrowest width.

Q. Now, I suppose from the shore end of the jetties up to the upper end of the works—to the head of the pass—the channel is a tangent—a perfectly straight line. A. It is not.

Q. Then a bare inspection of the surveys of the pass does not indicate to the navigator precisely where the water is, or the shoal water is? A. No, sir.

Q. In order to navigate that pass, then, I conclude that it is necessary for a person taking a ship through having a draft up to the full capacity of that channel, to know where the channel is. A. Yes, sir.

Q. I suppose that if he didn't know where the channel was he

would experience no great difficulty in getting ashore—
589 getting on the bottom. A. He would be likely to get ashore.

Q. Then I gather that a stranger who is taking a vessel of twenty-five feet draft through there would have to keep in the channel pretty well. A. Most assuredly.

Q. To keep in the channel they would have to know where it was? A. Certainly.

Q. To know where it was he would have to be competent to pilot through there, would he not? A. He could get that information from our charts by simply asking for it.

Q. Is it a part of your duties down there to go aboard of every vessel with a chart? A. Not all; there are officers there they can't get them from by asking for them.

Q. How would a man know, who didn't happen to know, that there was a captain of engineers down there? A. I cannot answer that, sir.

Q. Then, for instance: I understand you to say that a stranger at that pass, who happened to possess a chart of the pass, with its soundings, and happened to possess intelligence enough to comprehend it, and was cautious enough to pilot, might get through the pass without anybody? A. He could.

590 Q. But it would require pretty near all those factors, would it not? A. Undoubtedly.

Q. Now, has there been any lateral change in the location of that channel at any point since you first went there? A. Yes, sir; but it has been of a trifling extent; in some places it has narrowed, in others widened, but the general channel has remained practically the same.

Q. You mean that the middle throughout of the channel has neither drifted to the eastward or westward at any time? A. No; it may have drifted a little to the eastward or the westward, but not of much consequence.

Q. Now, I understand you to say that the laws of the United States didn't require a vessel to take a branch pilot in going through the jetties? A. It does not now, but did.

Q. Will you be kind enough to tell me exactly where, in what volume of the published laws of the United States, there ever was any act of Congress requiring a vessel to take a branch pilot? A. I cannot give that.

Q. When you say that the laws of the United States did require, at one time, *at one time*, vessels to take a branch pilot
591 you refer then to some supposed rule? A. I refer to the regulations, to the act of Congress which gave to the Secretary of War the right to frame certain regulations covering the navigation of the channel at the mouth of the river—at the mouths of the river.

Q. Is it the act of June 1st, 1874? A. Yes, sir.

Q. It is entitled "an act to facilitate the execution of, and to protect certain public works of improvement at the mouth of the Miss. river? A. Yes, sir; that is the act.

Q. Now, sir, that is the act that gave control over South Pass in your opinion? A. It does give control over the works of improvement in my opinion at the South Pass.

Q. The act provides that from and after the passage of this act the Secretary of War is directed to assume full control over a particular channel at the mouth of the Miss. river, in course of excavation or improvement by the Government of the United States," &c.; the act was approved June 1st, 1874, was this particular channel of the South Pass under improvement at that time? A. No, sir; it was not.

592 Q. Is it not true that the particular channel under improvement at that time was the Southwest Pass? A. It is.

Q. Then the basis of your opinion is that the South Pass is controlled by this act, and that this act of such a character that they can stretch it over and make it apply to the channel of the mouth of the Miss. river that was not then under improvement or contemplated improvement? A. I don't know whether the South Pass was contemplated at that time or not; reports had been made on it.

Q. Do you know whether or not Eads' jetty system, as applied to that pass, had been contemplated? A. I do not.

Q. You have no knowledge that it had? A, No, sir.

Q. Then your statement that these regulations that you have referred to of the Secretary of War, as relating to the Government, navigation of and improvement of the South Pass, rest upon your construction of this act of June 1st, 1874? A. It does entirely.

Q. You know of no other legislation? A. No, sir; no other.

Q. Has anything ever occurred, to your knowledge, from the time that Eads first commenced his jettying at the South

593 Pass up to the present time, that under any exigency, no matter what, of the contract, that Eads has given the Government the right to assume control over the improvement of the South Pass? A. None that I know of.

Q. Did you ever see the South Pass before it was improved? A. Never.

Q. Did you ever sound it there at the bar, or at the sea end of the pass, or at the head of the pass, before any effort had been made to improve it, or the works of Eads' improvements had been constructed? A. I never did.

Q. Therefore, when you say that there was eight feet of water at the bar end—— A. I get it from the printed reports, the printed official reports.

Q. Now, when you say that it does not need a pilot to go through that pass, what do you mean? A. I mean that if he knows the channel he is capable of taking a boat up.

Q. That is, if he was perfectly versed with the depth of water, and the locality where it existed, he could—— A. If he knew where the channel was, and what the depth of water was, he could keep it.

Q. Would not that be true of every port in the world? A. Certainly.

594 Q. Do you know, or can you imagine, any entrance to any seaport or river in the world that a man who knew all about the channel, where it was, could have any difficulty in getting in? A. None whatever.

Q. In that respect the South Pass is in about the same condition as any other entrance to a harbor, is [it] not? He who knows how to go in may go in, and any man who does not know how might stick or go in, according to circumstances? A. No, sir; you misunderstand me there. If the entrance to a harbor has a bar with a crooked channel through that bar, it generally requires what is known as a pilot to direct a vessel over that bar into the harbor; none such exists at South Pass.

Q. What I understand you to say, then, [is that] it is more difficult for a man to enter into a crooked channel that he [does not know] than to enter a straight channel that he knows? A. It is more difficult to go into a crooked channel.

Q. Is that difficulty in the handling of the ship, or in giving it direction? A. In giving it direction.

595 Q. So that a man who knows a crooked channel perfectly well would be capable to direct a ship through it? A. Certainly.

Q. Do you know anything about the inauguration of what is claimed to be the new rules of this year for navigating the South Pass? A. Yes, sir; I know all about them.

Q. What reason was there for changing the old ones? A. In consequence of my principal assistant almost seeing a collision occur in the pass, or seeing the danger of a collision in the pass.

Q. Who is your principal assistant? A. Mr. C. Donovan. He is the resident engineer there.

Q. Was that approximate collision brought about by the observance of the old rules? A. That I cannot state. The old rules were not sufficiently in detail; there was no provision in the old rules to prevent vessels from passing each other going in the same direction.

Q. Why was another change made than that, then? A. To avoid the possibility of a collision.

Q. Was the provision in the old rules requiring vessels over twelve feet to carry a licensed branch pilot rescinded, left out of

the new rules to give additional security to shipping? A.
596 The new rules don't say a word about pilots, except that it asks pilots, owners, masters, and every person in command of a vessel to obey, observe the rules.

Q. What I want to get at is, in redrafting the rules what influence was at work to drop that provision requiring branch pilots to have charge of vessels drawing over twelve feet of water? A. That I will try to give you. Less than a year ago, a communication was addressed to the Secretary of War, enclosing United States licenses to three pilots, authorizing them to pilot vessels down the Miss. river to sea; they were not regularly licensed branch pilots; this communication requested that the secretary endorse these licenses, giving to the holders of those papers permission, or authority, to pilot vessels through the jetties. As the law of Louisiana required all vessels using this channel, at the mouth of the river, to carry a branch pilot, I asked the Secretary not to authorize the pilots in question, to pilot vessels through, but that, in my judgment, the pass was perfectly safe for any one knowing the channel to take a vessel through. In conse-
597 quence so much of the regulations as required vessels to carry a pilot, was repealed or changed.

Q. Do you know who addressed that communication to the Secretary of War? A. I think it was Captain Black; but I am not certain.

Q. Do you know what licenses were sent forward? A. Three licenses; but what the names were, I cannot recall.

Q. Was the matter referred back to you? A. It was.

Q. With the petition and correspondence? A. With the copy of a letter from the Hon. John Ellis, I think, begging the Secretary of War, or asking the Secretary of War, to throw off, to do away, with so much of the law as required branch pilots.

Q. Did you ever have any communication with anybody interested in the removal of that restriction, as to these rules, aside from the correspondence with the Department? A. I never did, personally.

Q. Where were these rules drafted? A. The rules which now govern the navigation at the South Pass? Q. Yes, sir; by whom? A. By Mr. C. Donovan, and he consulted the pilots there.

Q. What pilots? A. With some of the pilots near the head of the pass.

Q. What do you mean, the branch pilots, or those who
598 are ———? A. The branch pilots, I presume, they are. Either it ——— They are called bar pilots.

Q. Do you know whether he consulted with anybody else? A. He consulted with Mr. Francis, who, I think, is chairman or president of the association of pilots.

Q. That is—— How do you know that, by hearsay? A. By his having told me; Mr. Donovan having told me.

Q. Mr. Donovan told you he consulted Captain Francis? A. Yes, sir.

Q. The matter was left in Donovan's charge then to frame, was it? A. Yes, sir.

Q. Were the rules as sent forward approved by the War Department without any change? A. they were, without any change, except there is one clause omitted—that we enforce a penalty if they did not observe them; that I think was stricken out; otherwise they were improved.

Q. Do you know the territorial limits of South Pass; within the limits of what State is it? A. I should say within the limits of the State of Louisiana.

Q. South Pass has not been taken materially out of its original pass by any of the improvements, has it? A. No, sir.

599 Q. Now, what is the extreme length from the shore end of the jetties to the sea end of the jetties? A. Approximately two miles.

Q. Now, is there a perfectly deep channel of approach in all directions at the mouth of the jetties; from the seaward, I mean? A. From the seaward—yes, sir, excepting perhaps a small mud lump beyond the outer end.

Q. Is there not a mud lump very nearly in a line with the channel down the pass? A. There was; I don't think there is now.

Q. Was it not the last time you sounded? A. If there was it had twenty-four feet of water on it.

Q. What do you mean by that? A. Well, you asked me if a mud lump was there. I say if one was there it had twenty-four feet of water on it. The mud lump I refer to was beyond the ends of the jetties about seven hundred feet.

Q. That is what I ask. It is very nearly in a line with the channel? A. Yes, sir; it is very near in prolongation of the axis of the jetties.

Q. I now ask you whether it existed there the last time you sounded? A. The mud lump did exist there, but it had twenty-four feet of water on it; that is my answer.

600 Q. Well, has there been much fluctuation in the depth of the water on that mud lump or its vicinity within the various soundings within a year? A. The year previous it had thirteen or fourteen feet of water on it.

Q. Been continually decreasing? A. It was cut off by dredging.

Q. Now, was that lump an uplift, or was it a portion of the solid matter brought down by the river? A. Probably an uplift.

Q. Is it not true that uplifts along that coast have been very constant, and still keep so? A. Yes, sir; still have them.

Q. It is a liability of that coast, is it not? A. Yes, sir.

Q. An uplift frequently produces shoal water where there was deep water before? A. Unquestionably.

Q. That incident of the bottom has been somewhat marked, has it not? A. It has been characteristic of the whole coast in the neighborhood of the mouths of the river.

Q. Supposed to be a hydrostatical cause, is it not? A. I don't know; there has been a dozen explanations, none of them were satisfactory.

Deposition of Geo. A. Sheldon.

Offered in evidence by complainants January 9th, 1883, and mentioned as No. 19 in foregoing note of evidence.

601 Captain George A. Sheldon, sworn by Mark Breeden, Jr., notary public. Examined in chief on behalf of complainants, by Mr. Hornor:

Q. What is your business, Captain Sheldon? A. I am master of the steamer Greyhound, sir.

Q. You were at one time on the Mary Lee? A. I am sometimes on the Mary Lee and sometimes on the Greyhound. I have been in the Anchor Line twenty menths. Both employed in the Anchor Line.

Q. You are—what vessel were you employed on last January? A. Well, part of the time I was on the Mary Lee and part of the time on the Greyhound, if I recollect right.

Q. What business was the Mary Lee engaged in? A. She was a pilot boat, sir.

Q. Engaged in the business of piloting vessels? A. Yes, sir.

Q. Where? A. Through the jetties.

Q. Through the South Pass of the Miss. river? A. Yes, sir.

Q. Did she have any branch pilots on her? A. Yes, sir.

Q. What were their names? A. Pliny Cox, Hiram Follett.

Q. George Falconi? A. Yes, sir; he was on her a little while.

602 Q. How long did they stay on *on* her? A. Well, Follett was on her from October until somewheres in January; I think about the middle of January.

Q. Of 1881? A. Yes, sir.

Q. Well, Cox? A. Cox came shortly afterwards. He remained, I think, until the first of February, if I recollect right.

Q. Falconi? A. Falconi? I don't recollect exactly how long he was there; some time in January.

Q. 1881? A. Yes, sir; last January; a year ago.

Q. Captain Sheldon, how long have you been engaged in the

tow-boat business, or the business of navigating the mouths of the Miss. river? A. Well, sir, I have got my 14th commission as a pilot now.

Q. Your 14th commission as a pilot? A. Yes, sir.

Q. Under the inspection laws of the United States? A. Yes, sir.

Q. All this time you have been engaged down at the mouths of the river? A. The best part of the time; I left a while ago here, but came back again.

Q. How does your commission read; from what place to what place? From Donaldsonville to the Gulf of Mexico.

Q. It has always been that way? A. Yes, sir.

Q. All these fourteen years? A. Yes, sir. No, I did not have have a Donaldsonville commission at first. My first com-
603 mission as a pilot I had from New Orleans to the sea. After I went into the Donaldsonville trade, and my license extended from Donaldsonville to the gulf.

Q. You are acquainted with the South Pass down there? A. Yes, sir.

Q. For how large vessels is the South Pass now navigable? A. Twenty-five feet.

Q. How long has it been navigable for vessels drawing twenty-five feet of water? A. I suppose about two years.

Q. Is the navigation of the South Pass easy or difficult? A. Very easy, sir.

Q. Is it or not necessary for vessels entering or leaving the South Pass to have what is known as a branch pilot?

Objected to by Mr. Beckwith.

A. No, sir; not if the captain know the way through.

Q. If the captain of what? A. Of the vessel. If he has been through there once he can go again.

Q. Are there or not charts published of the pass? A. Yes, sir; you can get them from the engineer at Port Eads.

Q. Can a competent navigator, with the assistance of a chart, take a vessel through that pass without a branch pilot? A. Yes, sir.

Q. At what point in the pass are branch pilots in the
604 habit of coming on board of a ship that they take out of the pass to sea? A. Since a few years they have been boarding vessels at the head of the pass.

Q. Well, I mean now? A. Now they board them at the head of the pass. Previous to that we used to bring them through ourselves the pass, down to the light-house, at Port Eads.

Q. What was the custom a year ago last January? A. It was customary for the branch pilot to come on at the head of the pass; at the head of the pass.

Q. Where did he leave her? A. At the end of the pickets.

Q. Where is the end of the pickets? A. Just outside of the bar; that is of the boar outside of the jetties.

Q. Where is it the habit of these branch pilots to board a vessel coming in the jetties from the sea? A. That depends on circumstances, sir. They have got it all their own way now, and they generally wait until they get pretty close in. I towed a vessel in there and the pilot came aboard inside of the sea buoy.

Q. Where is that? A. It is an automatic buoy placed a quarter of a mile outside of the jetties.

Q. By the Government? A. Yes, sir.

605 Q. What for? A. For bringing vessels in a fog. If you get hold of that buoy there is no trouble in getting into the pass in any kind of weather.

Q. Where do these branch pilots leave a vessel that they bring in from sea? A. At the light-house, Port Eads.

Q. How far is that from the end of the jetties? A. I suppose it is about two and a half miles from the end of the jetties.

Q. How long does it take to make the run there, from the outside where the pilot boards the vessel to the light-house? A. That depends upon how fast she is going. If it is a steamer, being towed half an hour, three-quarters, sometimes an hour. It depends on whether it is a steamer or a sailing ship that is being towed and what boat is towing, how big she is. .

Q. What is the character of the channel there, straight or crooked? A. Straight.

Q. What is the average depth of water now? A. I suppose about twenty-four feet.

Q. Is there not a twenty-five foot channel there? A. Yes, sir.

Q. How wide is it? A. I suppose it is about one hundred and fifty feet, probably more.

Q. How wide is the twenty-four foot channel? A. It is over two hundred feet wide.

606 Q. You are in the business of towing vessels through this pass? A. Yes, sir.

Q. When you are towing a vessel through this pass and a branch pilot comes aboard of her what do you do? A. At which end do you mean, when I am towing her from the sea or the river.

Q. When you are going down the river to the sea? A. He generally comes aboard at the head of the pass, and goes out on the poop and takes a look around; I don't see that he says anything, we generally tow the vessel down alongside.

Q. Does he interfere with the management *with the management* of the vessel by the tow-boat? A. No, sir.

Q. In going in after the vessel has been taken in charge by the tow-boat what does the pilot do? A. Steers after the tow-boat.

Q. Simply follows her? A. Follows her, sir.

Cross-examination by Mr. BECKWITH:

Q. How long have you known Follett? A. Well, I have known Follett, I suppose, eight or nine years, sir; but that I would not be positive of; I have heard of him.

Q. When did you first know of his attempting to pilot a vessel, or have you any knowledge, do you know of his attempting to pilot vessels? A. I knew him to be a branch pilot; I suppose about when we were working on the lighter—all of fourteen years ago.

607

Q. You have known him more than nine years? A. I mean personally I have known him nine years; but I knew him as Follett, by name, by sight, before; about nine years personally; but I knew him by sight, knew that was his name before.

Q. Was he a pilot all this time during the nine years you knew him personally? A. No, sir; not all the time.

Q. When did he first come aboard of the Mary Lee? A. In October I think it was, the first day of October last year.

Q. Who was in command of the Mary Lee at that time? A. I was, sir.

Q. Who made up the time and pay-roll of the Mary Lee? A. I did, sir.

Q. How did he ship on the Mary Lee? A. I shipped him at so much a month.

Q. How much? A. One hundred dollars.

Q. What for? A. To pilot vessels through the jetties.

Q. Shipped him as a branch pilot? A. Yes, sir.

Q. What was the boat engaged in at that time? A. Piloting, sir.

Q. Did she do any towing? A. Yes, sir; towed also.

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Q. You would tow when you got a chance and pilot when you got a chance? A. We would tow or else pilot.

Q. You towed vessels for hire during the time? A. Yes, sir.

Q. How long did they continue, did he continue on board? A. I think it was to very near the first of February, somewheres there; I don't recollect exactly—somewheres in that neighborhood.

Q. Never had any reason to believe he was not a pilot? A. No, sir.

Q. Who owns the Mary Lee? A. J. W. Black and others.

Q. Who are the others? A. I don't know exactly who the others are.

Q. How much did Follett own in it? A. I forget exactly what he owned; I know he owned a small interest in it.

Q. Do you know he owned an interest in it positively? A. I did not see the writings, but I understood he did.

Q. Whom did you understand it from? A. From Follett himself; he told me had an interest in it when he started out.

Q. Did you understand it from anybody else? A. No, sir, because I never asked the question.

Q. Did J. W. Black say he had an interest in it? A. No, sir; I was told by Follett.

Q. He never got any more wages than he shipped for,
609 did he? A. Not that I know of, sir.

Q. What were his exact duties on board of that vessel? A. Nothing to do but to take vessels in and out; pilot them in and out of the South Pass, through the jetties.

Q. For pay? A. Yes, sir.

Q. What did you charge those vessels? A. The customary price, sir, we charge all vessels.

Q. What do you mean by the customary price? A. Well, four and a half a foot for everything drawing over ten feet?

Q. You mean such rates? A. Yes, sir.

Q. Who got the certificate or the bill for pilotage? A. The pilot boat that piloted the ship.

Q. Yes, I know; but Follett did not. Did Follett collect them? A. No, sir.

Q. What did he do with them? A. He gave them to me.

Q. What did you do with them? A. I sent them to my agent here to have them collected.

Q. Who was your agent? A. I had two here.

Q. Who were they? A. Mr. Brown and Captain Black.

Q. They collected them and returned the money to you? A. They made returns every month; yes, sir.

Q. To whom? A. To me.

Q. At the boat? A. No, sir; in town the accounts were kept.

610 Q. What I mean to say is, did they make any returns of that boat to you? A. Yes, sir.

Q. In writing? A. Yes, sir.

Q. Where are the writings? A. We have got them.

Q. Produce them? A. I have not got them here.

(Mr. Beckwith calls on Mr. Hornor for the production of the writings.)

Q. When did Cox come on the boat? A. I don't recollect the exact date. It was shortly after we were running; but I can tell by reference to the books.

Q. How was he shipped? A. Just the same. On the same terms and conditions.

Q. You recollect his duties? A. Same as Follet; to pilot ships through the South Pass, the jetties.

Q. Shipped as a branch pilot? A. Yes, sir.

Q. You never heard that his right as a branch pilot was questioned? A. No, sir.

Q. Never knew that his authority as a branch pilot, or the authority of Follet as a branch pilot was disputed? A. No, sir.

Q. Never heard it questioned? A. Never heard it questioned, sir.

Q. Are they branch pilots now? A. I don't know, sir.

Q. Well, did he get any more pay than he shipped for? A. Who, Cox?

Q. —— A. I don't recollect, sir, whether he did or not; the books will show the accounts what he got.

611 Q. Who took the bills for pilotage, approved the bills for pilotage? A. Turned them all over to me, sir, and I sent them to the city for collection.

Q. They were collected by your agents? A. Yes, sir.

Q. To whom were the returns made? A. To me, sir, at the proper time.

Q. On board of the boat? A. No, sir; in the city.

Q. Who commanded this boat during the time she was in the piloting business with Cox and Follet on board? A. I did, sir.

Q. Where was the boat during the most of the time? A. At the mouth of the river.

Q. How did you get up here to get reports? A. When I felt like coming up I put a captain on that boat, on the boat, for a few days, and came up to town.

Q. You came up especially? A. No, sir.

Q. Is it not true that the whole thing was an enterprise of Mr. Black, and that these returns were made to J. W. Black instead of to you? A. No, sir.

Q. The money, then, came to you, I suppose? A. Yes, sir.

Q. How much was the whole of it? A. I don't recollect exactly, the accounts will show.

612 Q. Mr. Black had no interest in it whatever? A. Had nothing to do with it whatever, only to attend to the business for me; that is all he had to do with it.

Q. Who employed you as master? A. I chartered the boat, and of course I appointed myself master because I could hire myself.

Q. Then this boat was under a charter by you from when? A. I think from October 1st I took possession of her.

Q. On what terms did you charter her? A. Two thousand dollars a month.

Q. Was that charter in writing? A. Yes, sir.

Q. Where is it? A. We can produce it; I have not got it here.

Q. For what time was it entered into? A. I think some time in February; I am not positive about that. Commenced it in

October. About the first of October the charter was made. This is the time I took possession of the boat.

Q. Where was that charter executed? A. In the city, sir.

Q. In October? A. Yes, sir.

Q. When? A. Some time about the 1st; I don't recollect exactly—before we sailed.

Q. Was that charter party dated, bear date when it was executed? A. Yes, sir.

Q. How much was it for? A. Two thousand dollars a month, to be paid monthly.

Q. The first of the month or the end of the month? A. The end of each month, sir.

613 Q. Did that charter give you absolute control over the vessel? A. Yes, sir.

Q. Mr. Black had no control over it at all, then? A. No, sir; he *way* simply my agent.

Q. Do you know James M. Flinn? A. Yes, sir.

Q. Did you see him in October? A. No, sir.

Q. Who signed the charter-party for the vessel? A. Captain Black, the managing owner.

Q. Did you suppose Follett to have an interest in that ship at the time of your charter-party? A. Well, I cannot say whether I did at that time; in fact, I did not inquire.

Q. Do you know whether Cox had any title in that boat or not? A. I cannot say for certain.

Q. What do you know about it? A. I don't know whether he did or not; I think he did.

Q. You never inquired about it? A. No, sir; never bothered my head about it.

Q. What was the duration of this charter? A. I had her by the month, sir; I could give her up at any time I wanted to.

Q. Could Mr. Black take her away from you at any time he wanted? A. Yes, sir; he could take her away; of course, I could give her up, too.

Q. Could that contract of charter-party be terminated by
614 either party at the end of the month? A. Yes, sir.

Q. You collected, then, all the bills? A. I collected all the boat earned.

Q. Where were your accounts kept? A. In the city.

Q. Where abouts in the city? A. In Captain Black's office.

Q. Any account current of the collections returned to you? A. Yes, sir.

Q. How many? A. I forget the number exactly; I have got them.

Q. Where are they? A. Knocking around home, sir.

Q. Where is your home? A. New Orleans.

(Mr. Beckwith calls on Mr. Hornor for the production of the charter-party, and the account current.)

Q. Now, to whom did you pay this two thousand dollars a month? A. To Captain Black.

Q. Have any dealings with Flinn about it? A. No, sir; he (meaning Black) is the managing owner of the concern.

Q. When did you first see Flinn? A. I first saw Captain Flinn, I suppose, between three and four years ago.

Q. Did you receive any direction from him during any of the time you had this Mary Lee under charter? A. No, sir.

Q. Did you receive any direction from him? A. No, sir.

Q. Did you account to, or through him, for any of the
615 earnings of the boat? A. My dealings, sir, were with Captain Black, the managing owner.

Q. How long was this third man on the boat? A. don't recollect exactly; but the accounts will show how long he was there.

Q. How long do you think it was? A. Well, I suppose, somewheres in the neighborhood of ten or fifteen days, about, I cannot be positive; the accounts will show how long he was there exactly.

Q. On what terms did he go on board of that boat? A. The same, sir.

Q. Was he shipped? Yes, sir.

Q. As what? A. Pilot.

Q. When did he leave? A. I don't recollect the exact date, sir.

Q. You collected the bills for his pilotage? A. Yes, sir; collected everything.

Q. How does your account stand with J. W. Black on that charter-party; have you paid it yet? A. Yes, sir; paid every cent of it.

Q. At the end of what month was this charter cancelled? A. I don't recollect exactly what month it was; it was shortly after ———

Q. Does your account show? A. Yes, sir; the accounts show everything.

Q. Have you got an account of the amount of money; any separate account of Follett and Falconi? A. I didn't keep separate accounts.

616 Q. What does the account show? A. I didn't keep a separate account of each man's pilotage; just lumped the whole thing.

Q. Your account current shows what vessels were piloted and who piloted them? A. Oh, yes, sir.

Q. All the accounts returned to you by Mr. Black show what vessels were piloted? A. Yes, sir.

Q. And who owned the vessel, or the owners, and the money that was collected? A. I expect so; yes, sir. The name of the vessel and the amount that was collected is about all that is required.

Q. Will your account show that? A. Not the consignee; the ship's name and her draft and the amount received.

Q. What pay did you get individually? A. Well, I was not getting any pay. I was running the boat on my own account. I was running the chances of that—of her making something.

Q. Did you make anything? A. Well, we didn't lose anything.

Q. I ask you did you make anything under that charter-party? A. The accounts will show.

Q. I ask you did you make anything? A. I don't recollect.

Q. Well, sir, who bought the coal for her? A. Captain Black; he bought the coal and furnished the crew.

617 You say he was——. A. He was to furnish it—the boat, the crew, and the coal—for so much money.

Q. For two thousand dollars a month? A. Yes, sir.

C. He was to pay all the crew? A. Yes, sir.

Q. Did he pay Follett? A. No, sir; Follett was not one of the crew; I hired Follett for this special purpose.

Q. Did he pay Cox? A. No, sir; I paid Cox.

Q. Did he pay Falconi? A. I paid Falconi; that was outside the crew he hired. We hired those men for a special purpose.

Q. When you say "WE" whom do you mean? A. I mean I; but we have always got a habit of saying we.

Q. When you threw up the charter-party what was your—where was the tow boat then? A. I was employed then to go as captain of the Greyhound at a salary of one hundred and twenty-five dollars a month.

Q. What became of the Mary Lee? A. Well, we laid her up in Algiers for a little while.

Q. What was done with her then? A. Then she went to towing here again.

Q. Who was master of her? A. I was master of her.

Q. At what pay? A. The same, sir—one hundred and twenty-five dollars per month.

618 Q. What pay were you getting before you got the charter? A. One hundred and twenty-five dollars per month.

Q. Then I understand you dropped your position as a salaried captain in October, and chartered this vessel, this Mary Lee, at two thousand dollars a month? A. I chartered her at two thousand dollars a month, and, as he had to have a captain, of course I was allowed so much; that was one hundred and twenty-five dollars; that was my regular salary. For this two thousand dol-

lars he had to have a captain for her, and as I went captain of her I drew my pay.

Q, Did you pay yourself? A. No, sir; Captain Black furnished the crew and the boat and the coal for so much money; he had to pay me with the balance of the crew. Of course that was outside.

Q. Then you chartered—— A. He had either to get a captain of her, had to hire me, or somebody else; he had to pay the captain of her.

Q. This charter gave you possession of the boat, did it not? A. Yes, sir; of course.

Q. Then this charter was this sort of a document; you got absolute control of the ship for two thousand dollars a month,
619 and Mr. Black was to man the crew—man the vessel—and he was to pay you one hundred and twenty-five dollars a month, as captain of the Mary Lee, under your charter? A. Yes, sir.

Q. Therefore your charter was but little over $1,875.00? A. Yes, sir; $1,875.00.

Q. Now, you say he was to pay nobody else but the crew, yet you paid Follett and Cox, and—— A. Yes, sir.

Q. And Falconi? A. Yes, sir.

Q. Well, it was a curious sort of an arrangement, was it not? A. I don't think so; nothing curious about it. I required all these men.

Q. Now, is it not true that you ran that boat from the first to the last on account of J. W. Black, and that your only interest in the matter was a fixed salary of one hundred and twenty-five dollars a month that you got every month? A. No, sir.

Q. Now, you got one hundred and twenty-five dollars a month, whether you paid the two thousand dollars a month or not, did you not? A. Yes, sir; that was my salary.

Q. You drew your salary, you did not lose that at all? A. Well, I don't generally do.

Q. You don't know whether you made any more or not? A. Oh, yes, sir; we made a little more than that.

620 Q. When you say "we," whom do you mean? A. I always say we, I mean I; it is a habit I have of saying we; if I tow a ship I say we, I mean I.

Q. You cannot tell me how you came to give up that charter by which you earned more than one hundred and twenty-five dollars a month, can you? A. I don't understand your question, exactly.

Q. Did that contract of charter-party of the Mary Lee that you have sworn to give you a thing, do you think? A. Yes, sir.

Q. In money? A. Yes, sir.

Q. Can you approximate it? A. No, sir; I have no idea.

Q. Was it fifty dollars? A. I don't recollect, exactly.

Q. Was it fifty cents? A. Won't say.

Q. But you are certain you got one hundred and twenty-five dollars a month, every time? A. Yes, sir.

Q. You are perfectly certain that you paid two thousand dollars a month, less your one hundred and twenty-five dollars salary, and made no loss? A. Yes, sir; I made no loss.

Q. You always knew this to be a charter between you and Mr. Black from the time you entered into it in October; that is, you chartered this vessel? A. Yes, sir.

Q. Mr. Black always knew it? A. Yes, sir.

Q. Mr. Black always knew that he chartered that vessel to you? A. I should think so; yes, sir.

621 Q. Mr. Black always knew that he chartered that vessel to you? A. I should think so; yes, sir.

Q. You talked about it frequently together? A. Yes, sir.

Q. Your accounts, how often were they made out? A. My accounts were made out every month; I got them every month, and I kept a memorandum aboard of the boat, and I knew what we were doing.

Q. Where were the crew paid off? A. Aboard the boat, sir.

Q. Who paid them the money? A. The captain of the boat, sir.

Q. That is, you did? A. Yes, sir.

Q. Where did you get the money from? A. From Captain Black.

Q. Where did you send the vouchers? A. To the office.

Q. Did Falconi own anything in that vessel? A. I cannot say, sir.

Q. Did you ever know of his owning anything? A. No, sir; I don't know.

Q. Can you fix the date when he left the vessel? A. No, sir; I don't recollect exactly the date.

Q. Was it during the time you had her under the charter? A. Yes, sir.

Q. You remember whether it was near the end of February? A. I don't recollect exactly.

622 Q. How long did you have that vessel under charter for two thousand dollars a month after Falconi and Cox and Follett left you? A. Not long, sir.

Q. Well, how long? A. I cannot say exactly how long; I don't recollect the dates.

Q. Was it a week? A. I cannot say exactly; I don't recollect.

Q. How were you able to make two thousand dollars a month after you lost your pilots? A. Didn't run her after we lost our pilots; didn't run her only a short time. We brought a tow up

with her, and I think we laid her up, but I don't recollect exactly the date; but after our pilots all left we brought a tow up and laid her up, but I don't recollect exactly the date.

Q. Did you give pay for that boat under the charter while she was laid up? A. I don't recollect how many days it was.

Q. Did you have her under charter when she was laid up? A. A. No, sir; couldn't do anything more after we had no more pilots.

Q. Will you tell us what your income was from the bills during those months the vessel was under this two thousand dollars a month charter? A. I don't recollect, sir; have no idea; the books will show.

Q. When you speak of the books what do you mean? A. Well, the accounts that were kept. She got credit for
623 what she towed.

Q. Now, did you open a set of books on your own account? A. No, sir; I just simply kept everything in a log book; a little private memorandum of my own.

Q. Where is your log book? A. I think I have it home; that is, my private log; the boat's is aboard.

Q. Have you any private memorandum of what the vessel did? A. I think I have one; I generally keep a private memorandum of everything I do and everywhere I go.

Q. In that log you noted the vessels as you towed them, and their draught? A. I would not say I noted them all; the most of them, though.

Q. What check did you have on Mr. Black in his accounts? A. This private log.

Q. I demand the production of that log. A. I don't know that I can find it; I might not be able to find it; it is somewheres; I cannot say where it is; I may find it, and again I may not; it is a private log of my own.

Q. It related to your business, being a check on the current account. Was that boat undertaken to be run as a pilot boat after you gave up the charter-party? A. No, sir; not after I
624 gave up the charter-party; never ran as a pilot boat; never had any more pilots.

Re-direct by Mr. HORNOR:

Q. How long did you know Cox as a branch pilot? A. Well, I don't know exactly the number of years. I knew Cox some years ago when he was a pilot on the pilot boat Ella.

Q. How many years ago, do you remember? A. I would not like to say exactly how long ago that was. I suppose that was fourteen or fifteen years ago. I know he was on the pilot boat Ella at one time with Captain Levine.

By the Stenographer:

The annexed exhibits, marked respectively Exhibits A, B, C, D, and E, Dec. 14th, 1881, in this case were produced subsequent to the taking of the above testimony by Captain Sheldon, in answer to the call of Mr. Beckwith.

Exhibit A.

Annexed to and accompanying the foregoing deposition of Geo. A. Sheldon.

This charter-party, made and concluded upon this 14th
625 day of October, in the year one thousand eight hundred and eighty, between J. W. Black, managing owner of the steam tug Mary Lee, of New Orleans, of the burthen of one hundred and seventeen tons, or thereabouts, now lying in the port of New Orleans, of the first part, and George A. Sheldon, of New Orleans, of the second part, witnesseth, that the said party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, doth covenant and agree on the freighting and chartering of the said vessel unto the said party of the second part, to be engaged as a pilot boat at the mouth of the Mississippi river for a term of one month or more, on the terms following, that is to say: The said party of the first part doth engage that the said vessel, in and during the said voyage, shall be kept tight, staunch, well fitted, tackled, and provided with every requisite, and with men and provisions necessary for such a voyage; and doth further engage that the whole of said vessel (with the exception of the cabin and the necessary room for the accommodation of the crew, and of the sails, cables, and pro-
626 visions) shall be at the sole use and disposal of the said party of the second part during the voyage aforesaid; and the said party of the first part doth further engage to supply the said vessel during the aforesaid voyage at all times with sufficient coal. And the said party of the second part, for and in consideration of the covenants and agreements to be kept and performed by the said party of the first part, doth covenant and agree to charter and hire the said vessel as aforesaid on the terms following; that is to say: The said party of the second part doth engage to use the said tug as a pilot boat aforesaid. And the said party of the second part doth further engage to pay said party of the first part, or his agent, for charter or freight of said vessel during the voyage aforesaid, in manner following; that is to say: Two thousand dollars per month, payable in cash at the end of each and every month. The party of the second part shall have the privilege of cancelling this charter upon payment of all charter money due, and giving twenty four hours' notice.

It is further agreed between the parties to this instrument that the said party of the second part shall not use said tug in the towing business in opposition to tug boats managed by or
627 associated with the first part. It is also further understood and agreed that this charter shall commence on the fifteenth day of October, 1880.

To the true and faithful performance of all the foregoing covenants and agreements, the said parties, each to the other, do hereby bind themselves, their heirs, executors, administrators, and assigns, and also the said vessel, her freight, tackle, and appurtenances, and the merchandise to be laden on board, each to the other in the penal sum of equal to the amount due upon this contract or charter, at the time of non-performance, and in any case a sum not less than than two thousand dollars, even if said amount should not be due.

In witness whereof the said parties have hereunto interchangeably set their hands and seals, this fourteenth day of October, 1880.

(Signed) J. W. BLACK.
" GEO. A. SHELDON.

Signed and delivered in the presence of—
(Signed) W. S. ROWLEY.
" J. B. BROWN.

628 EXHIBIT B,

Annexed to and accompanying the foregoing deposition of Geo. A. Sheldon.

Statement for October, 1880.

Capt. GEO. A. SHELDON,
In account with J. W. BLACK.

1880.				
Oct.	20.	By amount collected from S. S. Gillsland		$76 50
	21.	" " Brig Pride of Cheslanell		76 50
		" " S. S. Bywell Castle		60 75
		" " Hector		67 50
	23.	" " Bark Lydia		74 25
	28.	" " Harris Bailey		85 50
		" " Louisiana		51 75
		" " S. S. Montreal		76 50
	31.	" " Ship Saranak		85 50
		" " B'k Yarmouth		92 25
		" " Givoe		69 75
		" " S. S. Earl King		101 25
		" " Wm. Dickenson		90 00
				$1,008 00

Debits.

Oct. 31.	To 15 days' charter tug Mary Lee		$1,000 00
	Cash to balance acct.		8 00
			$1,008 00

New Orleans, Nov. 7th, 1880.

EXHIBIT C.

Annexed to and accompanying the foregoing deposition of Geo. A. Sheldon.

Statement for November, 1880.

Captain GEO. A. SHELDON,
In account with J. W. BLACK.

1880.			
Nov.	1.	S. S. Carradoc	$72 00
	2.	Ship Bolivia	94 50
	3.	S. S. S. Newminster	99 00
		Lumley Castle	67 50
		Jno. Watts (ship)	54 00
629	Nov. 5.	Bark Estilla	72 00
		Ship Eliza A. Kinney	72 00
		Bark Nanny	60 75
	7.	S. S. Saxon Monarch	94 50
		S. S. Algatha	87 75
		Bark Earl, of March & Kelley	60 75
		Schr. Jenny Wood	31 50
	10.	S. S. Mayworth	83 25
		Bywell Castle	85 50
	11.	Bark Mistletoe	90 00
		Anatra	60 75
		Georges	65 25
		Fonthill	28 00
		Antonio	51 75
		S. S. Mark Lane	85 50
		Schr. Mary Evline	28 00
		Ship Jno. Bunyan	51 75
	15.	S. S. Cella	72 00
		Frigate Chateau Renaud	81 00
	16.	Bark Kennd Alfson	42 00
		Concordia	72 00
		Geo. B. Doane	90 00
		S. S. Compton	58 50
		Bark Modern	84 38
		Ship Annie Goudey	99 00

Nov.	16.	S. S. Blythwood	$76 50
	20.	S. S. Blindley Castle	81 00
		Bark Chasseur	76 50
	24.	Francis G	63 00
		Schr. Silver Wing	31 50
		Forward	$2,423 38

630 Credits continued.

1880.		Amount brought forward	$2,423 38
Nov.	24.	By S. S. Cid	78 75
	25.	" ship Charles Baker	63 00
		" schr. D. A. Parkhurst	29 75
	27.	" bark Aalisund	67 75
		" " Niora Chiavina	74 25
	29.	" " Peree	87 75
		" " Anatra	78 75
		" " Clementine	63 00
		" ship Screamer	74 25
		" " Scotio	58 50
		" S. S. Cosma	84 38
		" " Lartington	54 00
		" ship Niagara	58 50
			$3,289 01

Captain GEO. A. SHELDON,

In acc't with J. W. BLACK.

1880.			DEBITS.	
Nov.	3.	To cash paid	J. B. Brown	$100 00
	7.	" " "	"	275 00
	15.	" " "	you	200 00
	20.	" " "	J. B. Brown	50 00
	24.	" " "	do	75 00
	27.	" " "	do	80 00
	29.	" " "	do	105 00
	30.	" " "	Charter of tug Mary Lee	2,000 00
				$2,885 00
		To balance		404 01
				$3,289 01

631 EXHIBIT D.

Annexed to and accompanying the foregoing deposition of Geo. A. Sheldon.

Statement for December, 1880.

Capt. GEO. A. SHELDON

In acc't with J. W. BLACK.

1880.			
Dec.	1.	By brig Sabra	$35 00
		" " Matre	54 00
	2.	" bark Euro	85 50
		" ship D. H. Morris	78 75
		" bark Adrice	68 63
		" " Hyperion	56 25
	3.	" " P. C. Merryman	56 25
		" " Otis	35 00
	4.	" S. S. Cadiz	65 25
	6.	" bark Emma	90 00
		" ship Virginia	85 50
		" bark Odisso	49 50
	8.	" S. S. Cid	94 50
		" brig Carrie Bertha	35 00
		" S. S. Buteshire	58 50
		" bark Caleb	58 50
		" " Filga	58 50
		" " Reynard	90 00
		" ship Edgar	58 50
	10.	" S. S. Compton	81 00
		" bark Arcadian	88 88
		" S. S. Lartington	81 00
632	Dec.	12. By S. S. Commander	69 75
		By Bark Peruana	54 00
Dec.	12.	By Albert Schultz	51 75
		" Helen Angur	67 50
		" Liugi Ruggurro	69 75
	13.	" Ship John Bunyan	78 75
		" " Dora	83 25
		" Schooner J. S. Wood	35 00
	16.	" Ship Amora	60 75
		" Brig Sabra	78 75
		" S. S. St. Louis	96 75
	20.	" " Buteshire	85 50
		" Ship Eliza A. Kennedy	83 25
	22.	" S. S. Cosmo	85 50
	24.	" Ship Andrew Jackson	78 75
		" Sch'r D. E. Parkhurst	58 50

Dec.	24.	"	S. S. Statesman	$76 50
		"	Bark Isaac	56 25
		"	S. S. Arrondale	58 50
		"	Ship Walter D. Wallett	87 75
	26.	"	Bark Preseocea	74 75
	29.	"	" P. C. Merryman	75 38
	30.	"	Ship John Watt	78 75
		"	Sch'r Wm. E. Clowes	54 00
		"	Bark Zeffero	76 50
		"	" Francisco, G	81 00
		"	Brig Charley Bertha	60 75
		"	Bark Luigea, V	65 25
		"	" Osseo	76 50
				$3,523 39

633 Capt. GEO. A. SHELDON,

In ac. with J. W. BLACK.

1880. DEBITS.

Dec.	2.	To cash paid J. B. Brown		$200 00
	4.	" " " You		100 00
	6.	" " " "		200 00
	8.	" " " J. B. Brown		150 00
	10.	" " " You		350 00
	13.	" " " J. B. Brown		50 00
	16.	" " " "		75 00
	22.	" " " "		100 00
	24.	" " " "		25 00
	30.	" " " "		35 00
				$1,335 50
Charter for tug Mary Lee				2,000 00
				3,$335 00
To balance				188 39
				$3,523 39

EXHIBIT E.

Annexed to and accompanying the foregoing depositions of Geo. H. Sheldon.

Statement for January, 1881.

Capt. GEO. A. SHELDON,

In acc. with J. W. BLACK.

1881.			
Jan.	3.	By Bark Otis	$81 00
		" S. S. Cypress	83 25
		" Bark Penana	76 50
		" " Reno	72 00
		" S. S. Ashfield	72 00
634		Credits continued—	
Jan'y	5.	By S. S. Gen'l Whitney	35 00
	10.	" bark Adrice	87 75
		" " Pratto	65 25
		" sch'r Silver Wing	33 25
		" " Sadie Walcut	31 50
		" ship Narwhal	58 50
		" " Charley Baker	82 13
		" S. S. Teutonia	97 88
		" bark Nuca	75 38
	11.	" ship Cromwell	81 00
		" S. S. Arondale	96 75
		" bark Christian Redman	76 50
	13.	" do. Caleb	72 00
		" S. S. Bernard Hall	76 50
		" brig Madawaska	49 50
		" S. S. Statesman	96 75
	15.	" S. S. Chrysolite	76 50
		" ship Edgar	83 25
		" bark Owe	81 00
	17.	" " Douglass Campbell	74 25
		" bark Amor	81 00
		" steamship Alara	72 00
	19.	" brig Dumary	49 50
		" bark Amata Fagli	54 00
		" " Lena	68 63
		" S. S. Ashfield	85 50
		" bark Filga	72 00
	22.	" " Carmal	49 50
		" " Albert Schultz	72 00
	24.	" " Rosena	67 50
			$2,597 02

635 Credits—continued.

	Am't brought forward		$2,597 02
1881.			
Jan.	26. By bark Tony Crogman		31 50
	" S. S. Glenbiri		74 25
	29. " S. S. Alva		99 00
			$2,801 77

Capt. GEO. A. SHELDON,

In ac. with J. W. BLACK.

1881.				*Debits.*	
Jan'y	3.	To cash paid	J. B. Brown		$100 00
	5.	" do.	do.		100 00
	11.	" do.	ship Cromwell		35 00
	14.	" do.	Geo. Falconi		100 00
	15.	" do.	do.		487 00
	20.	" do.	You		200 00
	24.	" do.	J. B. Brown		75 00
	28.	" do.	do.		100 00
Feb'y	14.	" do.	You		199 17
		" do.	charter tug Mary Lee		2,000 00
		For January			$3,394 17

RECAPITULATION.

Total Credits.

1880.	November	$3,289 01	
	December	3,523 39	
1881.	January	2,801 77	
			$9,614 17

Total Debits.

1880.	November	2,885 00	
	December	3,335 00	
1881.	January	3,394 17	
			$9,614 17

E. & O. E., New Orleans, Feb'y 15, '81.

636 *Exhibit D.*

Receipt of Falconi for $100.00 from Sheldon, offered in evidence by complainants January 9th, 1883, and mentioned as No. 20 in the foregoing note of evidence, has already been transcribed on page 142 of this transcript.

Exhibit B.

Order of chief engineers revoking order, &c., date July 10th, 1881. Offered in evidence by complainant January 9th, 1883, and mentioned as No. 21 in the foregoing note of evidence.

Exhibit B.

FLINN *vs.* FRANCIS.

Dec. 3, '81.

BRANCH PILOTS.

Capt. W. H. Heuer, United States Engineers, stationed in this city, furnishes the *Picayune* the following order of the chief engineer and the regulations rescinded by said order:

OFFICE OF THE CHIEF OF ENGINEERS, U. S. A.,
WASHINGTON, D. C., *July 10th*, 1881.

The regulations from this office dated December 9, 1874, made in conformity with the provisions of an act entitled, "An
637 act to facilitate the execution of, and to protect certain public works of improvement at the mouth of the Mississippi river," approved June 1st, 1874, are, by direction of the Secretary of War, hereby rescinded.

H. G. WRIGHT,
Chief of Engineers, Brig. and Bvt. Major General.

The following is an extract from the regulations of Dec. 9th, 1874, herein referred to:

1. No master or person in command of a vessel drawing more than 12 feet of water shall attempt to pass a vessel under his command through any channel that the Government of the United States is maintaining, improving, or attempting to improve, across a bar at the mouth of the Mississippi river, without having on board such vessel a branch pilot licensed to pilot vessels across the bars at the mouth of the Mississippi river, as provided for by the statutes of the State of Louisiana.

Exhibit A.

Order of Secretary of War, dated September 5th, 1881. Offered in evidence by complainant January 9th, 1883, and men-
638 tioned as No. 22 in the foregoing note of evidence.

Rules Regulating the Navigation of the South Pass of the Mississippi River.

(Circular.)

NEW ORLEANS, *October 1st*, 1881.

In obedience to the instructions of the Honorable Secretary of War, the following regulations for the navigation of the South

Pass of the Mississippi river are hereby announced as in force from this date. Owners, agents, and masters of vessels, pilots, and all others concerned will govern themselves accordingly. Inasmuch as grave interests of all these parties, and of the community in general, will be conserved by the strict observance of these rules, the active co-operation for their enforcement of all having the proper authority is expected and is earnestly requested.

W. H. HEUER,
Capt. Engineers, U. S. A., U. S. Inspecting Engineer for South Pass.

WAR DEPARTMENT, WASHINGTON CITY,
September 5th, 1881.

Under the authority conferred upon the Secretary of
639 War by the act of Congress approved June 1st, 1874, the following regulations relating to the navigation of the South Pass of the Mississippi river are hereby established:

1. Steam vessels navigating the South Pass are required to reduce their speed to not exceeding six miles per hour between a point five hundred yards above the South Pass light-house and the headquarters building, and a similar reduction shall be made in other parts of the pass when passing the boats, barges, floating mattresses, etc., that are being used in the construction of the jetties or the improvement of the channel.

The South Pass is considered as embracing the entire extent of channel between the upper ends of the works, at the head of the pass, and the outer or sea end of the jetties, at the entrance from the Gulf of Mexico.

The point referred to at five hundred yards above the light-house, between which and the headquarters building vessels are required to reduce their speed, is marked by a post painted white on the western bank of the pass.

2. All vessels anchoring in the pass (tow boats without tows
640 excepted) shall take position near the eastern bank of the pass, not less than five hundred yards above the light-house, and below the island at the head of the pass; and vessels so anchoring shall put out such extra moorings as may be necessary to prevent their being blown athwart the channel, and thus endangering the navigation of the pass, whenever required to do so by the United States inspecting officer of the works for the improvement of the pass.

3. All vessels navigating South Pass, and going in the same direction, shall not pass or attempt to pass each other, nor shall the vessel following approach the one ahead nearer than one mile distant.

4. No master or person in command of an outward-bound vessel drawing more than 12 feet of water shall attempt to pass such

vessel under his command through the South Pass after dark, but shall be required to anchor above the head of the passes till daylight, thus leaving the channel clear for upward-bound vessels.

Regulations 3 and 4 do not apply to tow boats without
641 tows, steam pilot boats, small steam launches, or vessels carrying vessels to Port Eads, La., but in their cases the trial of speed, or what could be called racing, is strictly prohibited in the pass.

5. No master or other person in command of a vessel drawing more than 12 feet of water shall enter the jetty channel from sea with such vessel until after a descending vessel which has previously entered said channel from above has passed to sea; and likewise no such vessel descending the river shall enter the channel at the head of the pass until after an ascending vessel which shall have passed the head of Goat Island has passed through the entrance at the head of the pass.

6. All outward-bound vessels must keep to the right or nearest the east bank of the pass, giving the right of way to those bound in the opposite direction.

7. All vessels discharging or waiting to discharge ballast at Port Eads must be moored to the bank by lines, and no vessel shall discharge ballast into the Gulf of Mexico within a dis-
642 tance of five miles from the sea end of the jetties; nor shall ashes or other refuse matter which may be liable to cause a shoaling or filling up of South Pass be dumped therein.

8. The dredge-boat "G. W. B. Bayley" shall have the exclusive right of way over all vessels navigating South Pass while she is at work therein, and all vessels in passing her must be governed by her signals; she shall give the usual steam-whistle signal for passing to her port or starboard, and this shall be responded to and obeyed by the passing vessel on the order of its master or pilot.

Any violation of the foregoing regulations will be punished as a misdemeanor under the above-cited act of Congress, the penalty for which is a fine not exceeding five hundred dollars or imprisonment for not more than six months, or both, in the discretion of the court.

ROBERT T. LINCOLN,
Secretary of War.

Document for Complainant. Filed by consent, January 9th, 1883.

United States of America.

643 WAR DEPARTMENT,
WASHINGTON CITY, *January 13th*, 1883.

Pursuant to section 882 of the Revised Statutes, I hereby cer-

tify that the annexed is a true copy of the rules promulgated by this Deparment on September 5, 1881, for regulating the navigation of the South Pass of the Mississippi river.

In witness whereof, I have hereunto set my hand and caused the seal of the War Department to be affixed on the day and year first above witten.

[SEAL.] (Signed) ROBERT T. LINCOLN,
Secretary of War.

Rules Regulating the Navigation of the South Pass of the Mississippi River.

(Circular.)

NEW ORLEANS, LA., *October 1st*, 1881.

In obedience to the instructions of the Honorable Secretary of War the following regulations for the navigation of the South Pass of the Mississippi river are hereby announced as in force from this date. Owners, agents, and masters of vessels,
644 pilots, and all others concerned, will govern themselves accordingly. Inasmuch as grave interests of all these parties and of the community in general will be conserved by the strict observance of these rules, the active co-operation for their enforcement and of all having the proper authority is expected, and is earnestly requested.

W. H. HEUER,
Capt. Engineers U. S. A.,
U. S. Inspecting Engineer for South Pass.

WAR DEPARTMENT,
WASHINGTON CITY, *September 5th*, 1881.

Under the authority conferred upon the Secretary of War by the act of Congress approved June 1st, 1874, the following regulations relating to the navigation of the South Pass of the Mississippi river are hereby established:

1. Steam vessels navigating the South Pass are required to reduce their speed to not exceeding six miles per hour, between a point five hundred yards above the South Pass light-house and the headquarters building; and a similar reduction shall be made in other parts of the pass when passing the boats, barges, floating mattresses, etc., that are being used in the construction of
645 the jetties or the improvement of the channel.

The South Pass is considered as embracing the entire extent of channel between the upper end of the works at the head of the pass, and the outer or sea end of the jetties at the entrance from the Gulf of Mexico.

The point referred to at five hundred yards above the light-house, between which and the headquarters building vessels are

required to reduce their speed, is marked by a post painted white, on the western bank of the pass.

2. All vessels anchoring in the pass (tow boats without tows excepted) shall take position near the eastern bank of the pass not less than five hundred yards above the light-house and below the island at the head of the pass; and vessels so anchoring shall put out such extra moorings as may be necessary to prevent their being blown athwart the channel and thus endangering the navigation of the pass, whenever required to do so by the United States inspecting officer of the works for the improvement of the pass.

3. All vessels navigating South Pass and going in the
646 same direction shall not pass, or attempt to pass, each other, nor shall the vessel following approach the one ahead nearer than one mile distant.

4. No master, or other person, in command of an outward-bound vessel, drawing more than 12 feet of water, shall attempt to pass such vessel under his command, through the South Pass after dark, but shall be required to anchor above the head of the passes till day-light, thus leaving the channel clear for upward-bound vessels.

Regulation 3 and 4, do not apply to tow-boats without tows, steam pilot boats, small steam launches, or vessels carrying mails to Port Eads, La.; but in their cases, the trial of speed, or what could be called racing, is strictly prohibited in the pass.

No master, or person, in command of a vessel drawing more than 12 feet of water, shall enter the jetty channel from sea, until after a descending vessel, which has previously entered said channel from above, has passed to sea; and likewise no such vessel descending the river, shall enter the channel at the head of the pass until after an ascending vessel, which shall have
647 passed the head of Goat Island, has passed through the entrance at the head of the pass.

6. All upward-bound vessels must keep to the right, or nearest the east bank of the pass, giving the right-of-way to those bound in the opposite direction.

7. All vessels discharging, or waiting to discharge ballast at Port Eads, must be moored to the bank by lines, and no vessel shall discharge ballast into the Gulf of Mexico within a distance of five miles from the sea end of the jetties; nor shall ashes, or other refuse matter, which may be liable to cause a shoaling, or filling-up of South Pass, be dumped therein.

8. The dredge boat, "G. W. B. Bayley," shall have the exclusive right-of-way over all vessels navigating South Pass, while she is at work therein, and all vessels in passing her must be governed by her signals; she shall give the usual steam-whistle for passing to her port or starboard, and this shall be responded

to and obeyed by the passing vessel on the order of its master or pilot.

Any violation of the foregoing regulations will be punished as a misdemeanor under the above cited act of Congress,
648 the penalty for which is a fine not exceeding five hundred dollars, and imprisonment for not more than six months, or both, in the discretion of the court.

ROBERT T. LINCOLN,
Secretary of War.

Endorsement.

145. C.	War Dept.	1883.
3294.	Eng'r Dept. 2 R. H.	1881.

Document for Complainant. Filed by consent January 9th, 1883.

UNITED STATES OF AMERICA, WAR DEPARTMENT,
WASHINGTON CITY, *January 13th*, 1883.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed is a true copy of the rules promulgated by this Department on December 14th, 1881, for regulating the navigation of the South Pass of the Mississippi river.

In witness whereof, I have hereunto set my hand, and caused the seal of the War Department to be affixed, on the day and year first above written.

[SEAL.] (Signed) ROBERT T. LINCOLN,
Secretary of War.

649 *Rules Regulating the Navigation of the South Pass of the Mississippi river.*

(Circular.)

NEW ORLEANS, LA., *December 20th*, 1881.

In obedience to the instructions of the Honorable Secretary of War, the following regulations for the navigation of the South Pass of the Mississippi river are hereby announced as in force from this date. Owners, agents, and masters of vessels, pilots and all others concerned, will govern themselves accordingly. Inasmuch as grave interests of all these parties, and of the community in general, will be conserved by the strict observance of these rules, the active co-operation for their enforcement of all having the proper authority is expected, and is earnestly requested.

W. H. HEUER,
Captain Engineer, U. S. A.,
U. S. Inspecting Engineer for South Pass.

WAR DEPARTMENT,
WASHINGTON CITY, *December 14th* 1881.

The following regulations relating to the navigation of the South Pass of the Mississippi river are hereby established
650 for the protection of said pass and the works for its improvement:

1. Steam-vessels navigating the South Pass are required to reduce their speed to not exceeding six miles per hour between a point five hundred yards above the South Pass light-house and the headquarters building; and a similar reduction shall be made in other parts of the pass when passing the boats, barges, floating mattresses, etc., that are being used in the construction of the jetties or the improvement of the channel, or in passing any other vessel; and after dark all vessels must slow down to six miles per hour throughout the entire pass.

The South Pass is considered as embracing the entire extent of channel between the upper ends of the works at the head of the pass and the outer or sea end of the jetties, at the entrance from the Gulf of Mexico.

The point referred to at five hundred yards above the light-house, between which and the headquarters building vessels are required to reduce their speed, is marked by a post, painted white, on the western bank of the pass.

2. All vessels anchoring in the pass shall take position
651 near the eastern bank of the pass, not less than five hundred yards above the light-house, and below the island at the head of the pass; and vessels so anchoring shall put out such extra moorings as may be necessary to prevent their being blown athwart the channel, and thus endangering the navigation of the pass, whenever required to do so by the United States inspecting officer of the works for the improvement of the pass.

3. No master or other person in command of a vessel drawing more than 12 feet of water shall enter the jetty channel from sea with such vessel until after a descending vessel which has previously entered said channel from above has passed to sea, and likewise no such vessel descending the river shall enter the channel at the head of the pass until after an ascending vessel which shall have passed the head of Goat Island has passed through the entrance at the head of the pass.

4. All upward-bound vessels must keep to the right or nearest the east bank of the pass, giving the right of way to those bound in the opposite direction.

652 [5.] All vessels discharging, or waiting to discharge ballast at Port Eads, must be moored to the bank by lines, and no vessel shall discharge ballast into the Gulf of Mexico within a distance of five miles from the sea end of the jetties; nor

shall ashes, or other refuse matter, which may be liable to cause a shoaling, or filling up of South Pass, be dumped therein.

6. The dredge boat "G. W. R. Bayley," shall have the exclusive right of way over all vessels navigating South Pass while she is at work therein, and all vessels in passing her must be governed by her signals; she shall give the usual steam whistle signal for passing to her port or starboard, and this shall be responded to and obeyed by the passing vessel on the order of its master or pilot.

7. Tow-boats with tows are not permitted to go down the pass after dark, but must anchor above the head of the passes till after daylight.

ROBERT T. LINCOLN,
Secretary of War.

Endorsements.

3896	Eng'r Dept. 3 R. H.	1881
145.	War C Dept.	1883.

653 *Motion to Suppress Depositions. Filed January 9th*, 1883.

United States Circuit Court, fifth circuit, Eastern district of La.

JAMES M. FLINN *vs.* R. FRANCIS *et als.* } No. 9282.

Now come the said defendants by their solicitor, J. R. Beckwith, and move the court now here that the following testimony and depositions taken on behalf of complainant herein, be suppressed and not considered in the hearing of this cause: First, the entire deposition of Captain William H. Heuer; second, all that portion of the deposition of George A. Sheldon which relates to the character of the channel, and the difficulty of piloting vessels through the channel and the jetties at South Pass, being that portion of his deposition to which objection was made and recorded at the time of the taking of the deposition; third, the entire depositions of G. W. Adams, Wm. H. Leppert, Simon R. Ulmer and John Conner; fourth, the entire deposition of Bernard Michel, the entire deposition of Robert Wilson, and the entire deposition of C. Donovan; the court is asked to suppress the above stated depositions for the reasons disclosed and set forth in the objections of the said defendants, taken and recorded in and with said depositions, and for the reason further that none of the testimony included in said depositions and parts of depositions now moved to be suppressed, is relevant to any issue or issues made or triable in this cause.

(Signed) J. R. BECKWITH, *Sol. for Def'ts.*

654 *List of Defendants' Testimony. Filed January 9th*, 1883.

Circuit Court of the United States, for the Eastern District of Louisiana.

JAMES M. FLINN
versus
RICHARD FRANCIS *et al.* } No. 9282.

List of proofs and depositions offered by the defendants on the hearing of this cause.

The defendant offers as evidence in this cause—

1st.

The act of association of the defendants as branch pilots of the port of New Orleans, of May 27, 1879, before J. A. Quintero, notary public, being Exhibit A, filed with the affidavit of Richard Francis, filed in this cause March 23rd, 1881.

2nd.

The ratification of the act of Richard Francis, of the 4th of June, 1879, also filed on the 23rd day of March, 1881, as an exhibit to the affidavit of Richard Francis.

3rd.

Exhibit B, filed on the 23rd of March, 1881, with the
655 affidavit of R. Francis, being the revocation of the license and commission of Hiram Follet, attested under the seal of the State.

4th.

Exhibit C, filed, of the same date, with the affidavit of Richard Francis, being the revocation of the license and commission of Pliny Cox as branch pilot, attested under the seal of the State.

5th.

Exhibit 1, filed, also of the same date, with affidavit of Richard Francis, being attested copy of the judgment of the civil district court for the parish of Orleans, in State of Louisiana vs. Hiram Follett, No. 1366 of the docket of said court, condemning him as an intruder into the office of branch pilot of the port of New Orleans, and ejecting him therefrom, enjoining him from acting as such pilot.

6th.

Exhibit 2, attached to and filed with said affidavit of Francis, being an attested copy of the judgment in case of State of Louisiana vs. Pliny Cox, No. 1367 of the docket of the civil
656 district court for the parish of Orleans, wherein the said Cox is decreed a usurper into the office of branch pilot of the port of New Orleans, ejected therefrom with injunction.

7th.

Attested copy of the record in the case of Richard Francis *vs.* Geo. A. Falconi, No. 2142 of the docket of the civil district court for the parish of Orleans, with the judgment and injunction against Falconi.

8th.

Attested copy of the record and judgment in the case of State ex rel. Attorney General *vs.* Hiram Follett, No. 1366 of the docket of the civil district court for the parish of Orleans.

9th.

Attested copy of the record in the case of the State ex rel. Attorney General *vs.* Pliny Cox, No. 1367 of the docket of the civil district court for the parish of Orleans.

10th.

Attested copy of the record in the case of Pliny Cox *vs.* George Osgood *et al.*, No. 1457 of the docket of the civil district court for the parish of Orleans.

11th.

657 Attested copy of the record in the case of Hiram Follett *vs.* Pilots' Association, No. 122 of the docket of the 24th judicial district court for the parish of Plaquemines.

12th.

Attested copy of the record in the case of Pliny Cox *vs.* John F. Gersdorf *et al.* Pilots' Association, No. 125 of the docket of the 24th judicial district court for the parish of Plaquemines.

13th.

An attested copy of the record in the case of George Osgood *vs.* J. W. Black *et al.*, No. 884 of the docket of the civil district court for the parish of Orleans.

14th.

Deposition of J. C. Keyser.
15th. Deposition of John T. Small.
16th. " " A. A. Douglas.
17th. " " George A. Falconi.
18th. " " Thomas P. C. Halsey.

19th.

Affidavit of J. W. Black in the record sworn to on the 16th June, 1881, before J. W. Gurley, master in chancery.

20th. Attested copy of the enrollment and license of steam tug Mary Lee.

(Signed) J. R. BECKWITH, *Sol. for Def'ts.*

658 1st. The act of association, before J. A. Quintero, notary public, on May 27th, 1879, offered in evidence by defendant in foregoing note of evidence, is already transcribed on page 39 of this transcript.

2d. The ratification of the act of Richard Francis of June 4th, 1879, offered in evidence by defendants in foregoing note of evidence, has already been transcribed on page 53 of this transcript.

3d. Exhibit B, filed on Mch. 23d, 1881, with affidavit of Richard Francis, offered in evidence by defendants in foregoing note of evidence, has already been transcribed on page 59 of this transcript.

4th. Exhibit C, filed with affidavit of Richard Francis, offered in evidence by defendants in foregoing note of evidence, has already been transcribed on page 61 of this transcript.

5th. Exhibit 1, filed with affidavit of Richard Francis, offered in evidence by defendants in foregoing note of evidence, has already been transcribed on page 62 of this transcript.

6th. Exhibit 2, filed with affidavit of Richard Francis,
659 offered in evidence by defendants in foregoing note of evidence, has already been transcribed on page 63 of this transcript.

7th. The copy of record no 2142, from the civil district court, offered in evidence by defendants in foregoing note of evidence, has already been transcribed on page 357 of this transcript.

8th. The copy of the record No. 1366, from the civil district court, parish of Orleans, offered in evidence by the defendants in foregoing note of evidence, has already been transcribed on page 250 of this transcript.

9th. The copy of the record No. 1367, from the civil district court for the parish of Orleans, offered in evidence by the defendants in foregoing note of evidence, has already been transcribed on page 283 of this transcript.

10th. The copy of the record No. 1457, from the civil district court for the parish of Orleans, offered in evidence by defendants in foregoing note of evidence, has already been transcribed on page 307 of this transcript.

11th. The copy of the record No. 122, from the 24th judicial district court for the parish of Plaquemines, offered in evi-
660 dence by the defendants in foregoing note of evidence, has already been transcribed on page 205 of this transcript.

12th. The copy of the record No. 125, from the 24th judicial district court for the parish of Plaquemines, offered in evidence by the defendants in foregoing note of evidence, has already been transcribed on page 156 of this transcript.

13th. The copy of the record No. 884, from the civil district

court for the parish of Orleans, offered in evidence by the defendants in foregoing note of evidence, has already been transcribed on page 326 of this transcript.

14th. *Deposition of J. C. Keyser.*

Offered in Evidence by Defendants in foregoing Note of Evidence.

United States Circuit Court, Fifth Judicial Circuit, Eastern Dist. of La.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et als.* } No. 9282.

Appearances: Joseph P. Hornor, Esq., for complain-
661 ants, J. R. Beckwith, Esq., for defendants.

Witness: J. C. Keyser.

Testimony taken by consent on behalf of defendant at the office of Joseph P. Hornor, Esq.,No. 16 Carondelet street, in the city of New Orleans, Louisiana, Dec. 3, '81.

Signature of witness waived.

Reported by Mark Breeden, Jr., notary and stenographer, 16 Carondelet st., N. O., La.

J. C. Keyser, sworn by Mark Breeden, Jr., notary public. Examined in chief, on behalf of defendants, by Mr. Beckwith.

Q. Where do you live? A. Pensacola.

Q. How long have you lived there? A. I have lived there for fourteen years, with the exception of the two years that I was residing here in New Orleans.

Q. What months? [—] I came here in 1875, and I left here the latter part of ———, well, in the early part of 1878,—May, 1878.

Q. Have you been in Pensacola since that time? A. Yes, sir.

662 Q. Do you know James M. Flinn? A. I do.

Q. Where does he live? A. Pensacola.

Q. How long have you known him? A. I have known him ten to twelve years; I think perhaps 11 years.

Q. Where has he resided during that period? A. His residence has been at Pensacola pretty much all the time. He was employed here, I think, perhaps twelve months.

Q. About how long ago, do you remember? A. I think that was in the latter part of 1876 or in 1877.

Q. What has been his occupation in Pensacola? A. Master of a tow boat.

Q. Do you know what his tow boat is named? A. Mary Louise.

Q. In whose employment is he, do you remember? A. D. F. Sullivan's.

Q. How long has he been master of the boat? A. I cannot say exactly. With the exception of the time that he was master of this boat here in this harbor he has been master of her all the time that he has been living there, with the exception of the few months that he was on the Lee.

Q. Has he been for the last three years master of the vessel? A. He has been master, yes, sir; I think he has about three years.

663 What is his tow boat engaged in; what business? A. Towing lumber and ships, vessels, moving vessels in the harbor, &c.

Q. Do you know where his house is? A. His house is on the hill at Pensacola.

Q. Has he a family? A. He had a family; I think he has lost his wife about a year ago.

Q. Any children? A. I don't think he has any of his own; he has some step-childen, perhaps one or two step-daughters.

Q. Is he keeping house there now? A. I cannot say.

Q. Was he then, last year? A. He was up to the time of his wife's death.

Q. Do you know anything of his——. Have you ever heard him say anything about any ownership or claim of ownership in the tow boat Mary Lee in this port? A. Yes, sir.

Q. What did he say about it? A. He told me he owned one-eighth of her, and Mr. Black also told me he owned one-eighth of her.

Q. When was that? A. I think that it was in 1876; it was at the time I asked him about her.

Q. Do you ever remember saying anything about it since? A. I have had one or to conversations with him since—well,

664 several conversations with him about her since—and in every instance except one he admitted his ownership of one-eighth. In the last conversation, it was some twelve months or less ago, he denied it.

Q. What did he say about it? A. He said he didn't own any interest in her.

Q. Will you please, as near as you can remember, state what he did say about it at that time? A. Well, I had a reason for asking him the question. You mean on the last occasion?

Q. Yes, sir. A. And I went to see him. I went to see him on purpose to have an interview with him in regard to the matter. I went to see him in order to have an interview with him in regard to the matter. I wanted to ask him the direct ques-

tion, "Have you any interest in the Mary Lee?" and I found him, and in the course of the conversation I asked him the question, say I: "Flinn, do you still retain an interest in the Mary Lee?" He says: "No; I do not." He says: "I never did own." He never did own one-eighth interest, but on several occasions previous to this he had informed me that he did own
665 one-eighth, and Mr. Black also informed me that he owned one-eighth.

Q. What is Flinn's employment? A. He is in the employ of D. F. Sullivan as master of the tug boat Mary Louise, or was, a few days ago.

Q. When you left Pensacola? A. Yes, sir.

Q. Is the nature of that occupation on that tow boat such as to keep him pretty well employed? A. I think he is generally pretty busy. I think he has all about he can do.

Q. Will you state generally what character of towage he has to do? A. It is sixteen miles from the mouth of Escambia river to Pensacola, and the majority of the lumber that is delivered to these ships came from that point, and it has to be brought by the tow boats from that point to Pensacola, and that is the business of this steamer, also in moving ships in the harbor to and from the wharves into the stream, and to and from sea.

Q. Is Sullivan a large purchaser of lumber? A. Yes, sir; any considerable number of ships usually in the season loading there in Pensacola.

[Q.] Are there any considerable number of ships during the season loading there in Pensacola? A. Yes, sir; I think the
666 average is about four hundred lumber vessels a year, sometimes more, sometimes little less.

Cross-examination by Mr. HORNOR:

Q. Captain Keyser, how long ago was it that you had this conversation with Flinn, in which he denied owning any part in the Mary Lee? A. It may be twelve months or so. The exact date I don't remember, the exact date.

Q. Where was it? A. In Pensacola.

Q. Well, whereabouts in Pensacola? A. It occurred on the Palafox wharf.

Q. I understand you to say you went to him especially for the purpose of asking him the question? A. I did.

Q. Was there anybody else present at the time? A. No, sir.

Q. Nobody heard the conversation between you? A. No, sir.

Q. You say that you had a special reason for asking him that? A. Yes, sir.

Q. Did you tell him that reason? A. Well, I did after having the conversation with him, but I didn't at first.

Q. He didn't know your reason when you asked him. A. No, sir.

667 Q. He had frequently before admitted that he did own a share in the vessel? A. Yes, sir.

Q. That was the first time he denied it? A. Yes, sir.

Q. What was your reason for going and asking him? A. I wanted to know.

Q. Why did you want to know; what business was it of yours? A. Well, I cannot say that it was any particular business of mine.

Q. Why did you want to know? A. I wanted to know for the simple reason that I had understood there was some trouble here between the pilots and Mr. Black, and that there was a question pending as to the ownership, and that probably something might hinge on that, and I wanted to ask him the question; I wanted to know; I wanted to be advised.

Q. You went to him for that purpose? A. I did.

Q. Now, did you go there to do that at the instance of anybody? A. I did.

Q. Whose instance? A. Well, I cannot say whose instance exactly.

Q. Why can't you? A. Because I don't remember.

Q. You don't remember whose it was? A. No, sir; I do not.

Q. Was it at the instance of the branch pilots in New Orleans?

668 A. I don't know that it was at their instance. I had received several letters from different parties in regard to the matter, had been here, and had had an interview with a number of them, and in the course of a conversation that question was asked about, and, as I probably fancied the question might be brought up in the United States court under certain circumstances, I wanted to be advised.

Q. You went to him for that? A. Not particularly for that; I wanted to know for my own satisfaction; for that also if necessary.

Q. Did you have an interest in their business; the business of piloting? A. I had none.

Q. Were you promised any compensation for ascertaining this information? A. No, sir.

Q. By anybody? A. No, sir.

Q. You say you had letters? A. I had received one or two letters from different parties.

Q. Who were they? A. I received one letter from Captain Francis and Captain Reed.

Q. Another branch pilot, is he not? A. Yes, sir.

Q. On this suit? A. Not particularly on this suit.

Q. What were they about? A. Several things.

Q. Have you got those letters? A. I have not.

Q. Were they destroyed? A. Yes, sir.
669 Q. In every instance? A. In every instance.

By Mr. HORNOR to Mr. BECKWITH:

I shall call on you for a production of the copy of that letter from Captain Francis, if he has one.

Q. Have you been brought from Pensacola especially to testify in this case? A. No, sir; I am here on other business; had not the remotest idea that I should be called on, and didn't know it until two or three hours ago.

Q. Do I understand you to say that after you had obtained from Flinn a denial that he was the owner of any part of the Mary Lee, that you explained to him what you wanted to know for? A. I did.

Q. What did you tell him? A. I told him the reason I asked the question was because this thing was coming up, or might, would, probably come up, it might come up, (I didn't know that it would then;) I asked the question because I wanted to know.

Q. What did he say, then? A. He only reiterated what he had already said.

Q. He still denied he had any interest in it? A. Yes, sir.
670 Q. That was about twelve months ago? A. I think that was about that length of time.

Q. You cannot particular it any better than that? A. No, sir.

Q. You had no other interview with him on the subject since? A. Never to my knowledge mentioned it since.

Q. Are you friendly with Flinn? A. Perfectly so.

Q. About twelve months ago, on the Parafox wharf, at Pensacola, no one else present, you had this conversation? A. Yes, sir.

Q. What was Flinn doing when you came to him? A. He was, if I recollect right, he was talking with some one, and I called him one side and asked him this question *asked him this question*.

Q. I understand you to say that you were to receive no compensation for the performance of this service that you did for these pilots? A. None whatever.

Q. No other inducement had you? A. None.

Q. Your inimical relations with Mr. Black have anything to do with it? A. I cannot say positively as to that.

Q. Your relations with Mr. Black are inimical, are they not? A. It depends on how you use that term.

Q. Unfriendly? A. They are most decidedly.
671 Q. Have been for some time past? A. Yes, sir.

Q. Several years? A. Yes, sir.

Q. You think this feeling had nothing to do with it? A. I do think that it did.

Q. You did it with a view to hurt Mr. Black? A. No, sir.

Q. You did it as a matter of friendship to the pilots? A. That is my idea; that is to say I will qualify it in this way; I had been asked the favor, it was simply a favor asked of me and I complied with it; I would have done it just as quick without any ill feeling to Mr. Black as I would with it.

Q. But still you were glad to do it because it was unfriendly to him? A. I was.

15th. Deposition of John T. Small.

Offered in evidence by the defendants in foregoing note of evidence.

United States Circuit Court, fifth judicial circuit, eastern district of Louisiana.

JAMES M. FLINN *vs.* RICHARD FRANCIS *et al.* } In Equity. No. 9282.

672 Appearances: Joseph P. Hornor, Esq., for complainants, J. R. Beckwith, Esq., for defendants.

Witness: John T. Small.

Testimony taken by consent, on behalf of defendants, in the office of Jos. P. Hornor, Esq., New Orleans, La., March 4th, '82. Reported by Mark Breeden, Jr., notary and stenographer, 16 Carondelet street, N. O., La.

John T. Small sworn by Mark Breeden, Jr., notary public.

Examined in chief on behalf of defendants by Mr. Beckwith, as follows:

Q. What is your age? A. 35.

Q. Your occupation? A. Pilot, sir.

Q. How long have you been a pilot? A. Since the 16th of June.

Q. How long have you been familiar with the mouth of the Mississippi river—the passes there? A. Ever since I have been born. I was born and raised at the Balize. My grandfather was a pilot, and I also had five uncles pilots.

Q. Are you familiar with the new jetty channel through the South Pass? A. Yes, sir.

673 Q. Do you know whether or not there is a lump or bar at or near the end of the jetties? [A.] Yes, sir.

Q. How far is it outside of the end of the artificial work of the jetties? A. Well, I cannot judge very exactly. I suppose about two hundred feet—perhaps three hundred. I cannot judge exactly; somewhere near that.

Q. Have you sounded on that bar or lump? A. Yes, sir.

Q. How often? A. Well, I sounded ——. We generally sound every relief. I sound about every two weeks—sometimes every three weeks, according to the chances we have to sound. Now I am away from there, perhaps I would not get to sound for three weeks—called away.

Q. Now, what water did you find in the shoalest place there when you sounded? A. I found twenty-two feet, sir.

Q. Never found any less? A. Oh, yes, sir. Well, we have all sorts of soundings.

Q. I asked you for the shoalest water. A. In the channel, sir?

Q. No; on the lump. A. On the lump? Fifteen feet exactly, on the lump.

Q. With a ship drawing twenty-three or twenty-four feet of water, do you have to avoid that lump? A. If you can; yes, sir.

674 Q. How do you do it? A. Well, try to get as near the channel as possible.

Q. How many channels are there about it? A. There are two channels.

Q. One to the east and the other to the west of it? A. Yes, sir.

Q. Which is the deepest channel? A. The east channel, sir.

Q. Whereabouts is that lump situated? A. It is to the eastward.

Q. If a line was to go through the centre, down between the jetties, would it be to the eastward or westward of that? A. It is to the eastward of that—a centre line.

Q. Which side of the lump is the deepest water? A. To the eastward, sir.

Q. To the eastward of the lump? A. Yes, sir.

Q. Does that lump cause a change or bend in the channel of the deep water coming from the eastward? A. Yes, sir.

(Objected to by Mr. Hornor on the ground that the question is leading, and that he don't understand it.)

By the witness: For instance, you are coming along with a ship, a vessel, the lump is in the way. You may accidently strike it, which will cause you to go on the east concrete, and the

675 fifteen feet lump will cause your ship to work to the nor'-ward. Another way, when you come in you may accidently get the current on your starboard bow, which will cause you to go the west jetty.

Q. Now, what sort of a turn is there in the channel—a sharp or a long turn? A. It is a sharp turn, sir.

Q. What difficulty, if any, is there in working a long ship in there? A. All the difficulty is in making the bend, she is very apt to get on the lump.

Q. Have you ever had a ship on that lump? A. Only this, "Australia, sir.

Q. Well, will you tell how you came to get the "Australia" on it? A. Yes, sir; when I entered the ———. Do you wish me to start from the time I boarded the ship at the head of the passes?

Q. Yes. A. I boarded the ship rather too late to enter the pass with her. Later in the afternoon, and it was not very prudent to go down, only the captain was in a hurry to go down. I told him it was after sundown, and it would be a dense fog, and it would be rather risky towing a very long ship. It was risky to go down with her. He said he would like to go down.
676 He said "try me;" "you can try me." I did go down and it set in a thick fog after we got in the jetties, and it cleared up after we got further down to what is called Goat's Island. When we got down to the light-house it set in a dense fog; I had to go on top of the —— to guess my distance whereabouts she was, but I managed to come, by guess work, down the channel, and I went through the west channel.

Q. What do you call the west channel? A. The straight channel.

Q. The west side of the lump? A. Yes, sir; and very soon later she stuck, and the current being very strong swept her to the eastward—to the westward—where she laid twenty-eight hours without any damage.

Q. What water was she drawing? A. She was drawing, the captain told me, twenty-three feet two; but he gave orders for twenty-three feet.

Q. You endeavored to take her out the straight channel? A. The straight channel; yes, sir; being she was a large ship, a very long ship.

Q. Why did you not try the east channel? A. Because I could not see where to go, sir; it was too thick a fog, and
677 I thought the west channel was about as good a channel to go through, but there was not enough water.

Q. Are you familiar with the charts or the soundings that are made, either by the Government or other parties, indicating the depth of water and the soundings of the South Pass from its head out to the end of the jetties? A. I have never seen any, sir.

Q. You don't know what water the charts give in that west channel? A. No, sir; only by our own soundings.

Q. Did you ground the ship in the middle of the channel? A. Yes, sir; in the middle of the pass, sir; in the middle of the bar.

Q. How far were you out of a straight line drawn through the centre of the jetties? A. Well, I don't think I was much out of the way from the centre.

Q. Is there any difficulty in working a long ship into that east

channel? Well, sometimes there is, according to the draft of water they work, they have.

Q. Is that difficulty increased by the currents at any time or the winds? A. Shoals; yes, sir; plenty of them. The bar is liable to shift every week.

678 Q. Are there any other portions of the channel of the South Pass, between the jetties and the head of the pass, that change? A. Yes, sir; we have a lump at Grand Bayou,—below Grand Bayou—on which you are very liable to strike with a deep draught ship, if you don't know where it is.

Q. Does *to* the channel shift there to the eastward or the westward at any time? A. Yes, sir; to the west more than to the east.

Q. I mean at Grand Bayou? A. I know there is a lump; they are working on it a couple of months, but they have not made any alterations in the lump that I see. The lump is there yet.

Q. You have to go around it to get a ship down? A. Yes, sir; you have to take the east shore?

Q. How long has that lump been there? A. It has been there to my knowledge, ever since I have been a pilot. They have shoals in other places, also.

Q. You say they have shoals in other places? A. Yes, sir; in the pass.

Q. Is there any place in the channel that shifts from week to week, and from month to month? A. No, sir; only at the bar.

679 Cross-examination by Mr. HORNOR:

Q. The steamship Australia, was the one that you put on this lump? A. Yes, sir.

Q. How long did she stay on it? A. Twenty-eight hours.

Q. How did she get off? A. She got off herself, by herself, without any assistance, by her sailing arrangement.

Q. By her sailing arrangement? A. By her self, her own power—sails and steam.

Q. Were you on her when she got off? A. No, sir; I was not.

Q. What time of day was it when she got on? A. She got on about six o'clock at night, or a quarter-past six.

Q. How long did you stay on board after that? A. I stayed until nine the next morning.

Q. Did the fog continue all night? A. Yes, sir; all night.

Q. Did the fog continue next morning? A. No, sir; about half-past eight it commenced to lighten up.

Q. It was clear at nine, when you left? A. Yes, sir.

Q. So you could see all around you? A. Yes, sir.

Q. Did you take an observation of where you were? A. Yes, sir; I drifted to the westward by the current.

680 Q. Then you were drifting all night? A. Yes, sir; gradually the ship was working all the time—working its way out.

Q. Was it going further and further to the westward? A. Yes, sir.

Q. Well, then, you were to the west of the centre line of the jetties when that fog cleared up at nine o'clock the next morning? A. Yes, sir.

Q. How far to the westward of that centre line? A. I suppose abour one hundred feet—very near it.

Q. About one hundred feet to the westward of it? A. Yes, sir, as near as I can judge.

Q. When did this take place? A. When the ship got ashore.

Q. Yes? A. Indeed I don't know; I didn't take any account of it; that I cannot tell.

Q. Did she have any other pilots except you? A. No, sir; afterwards I called the captain of the "Jennie Wilson," Tom Wilson?

Q. You called Tom Wilson, who is the captain of the "Jennie Wilson?" A. Yes, sir; a steam pilot boat; I told the captain, I suggested to him; the captain was very uneasy there.

Q. What captain? A. The captain of the steamship Australia; he seemed to be a little angry—not much. I said I

681 will, to satify you, call the pilot, who has this telegraph. So, says he, "I don't want him aboard." Says I, "I want him myself, to convince you that everything is all right, and there will be no trouble." I called him.

Q. You called who? A. Tom Wilson. So, he said, "I will be back after breakfast."

Q. Tom Wilson? A. Yes, sir; he went ashore and got his breakfast, and came afterwards on the boat. The captain met him before I did. I didn't see him until the captain got through talking. I simply went up to him and says, "Tom, are you going to send me a relief here?" Well, says he, "Perhaps the captain may not want you to leave." Says I, "Very well, I am satisfied;" but, I says, "I would rather you would stay here."

Q. Well, what was the upshot of it all? Tom Wilson stayed there in your place? A. Yes, sir.

Q. You went away and left Tom Wilson there? A. Yes, sir.

Q. Now, you say you have every two or three weeks sounded this lump on the outside of the jetties? A. Yes, sir;

682 whenever there is a good opportunity; sometimes you cannot sound.

Q. Now, how long is that lump from north to south? A. Oh, it is only—it is in a circle; it is not very wide.

Q. How wide? A. That I cannot judge very well, because I cannot say exactly.

Q. Well, about; was it ten feet? A. Yes, sir; more than that.

Q. An hundred feet? A. No, not a hundred; about twenty or twenty-five feet wide.

Q. Across from the east to the west about the same distance? A. Yes, sir.

Q. The shoalest water you have ever found on it was fifteen feet? A. Yes, sir.

Q. What, the deepest? I never found any deeper than that.

Q. Did you ever know of any other vessel to go aground on it except that Australia? A. I know of the Australia.

Q. Did you ever know of any other vessel except her? A. No; I have known sailing vessels to stay there about ten hours.

Q. What other vessels? A. I cannot mention them; this was before I was made a pilot.

Q. What vessels do you know of being there? A. I know of the Australia.

Q. What other vessels? You cannot name any other vessels.

A. No, sir; but I have seen others.

683 You saw others before you were made a pilot? A. Yes, sir.

Q. You have seen no others since you were a pilot? A. No, sir.

Q. You cannot say how long ago the Australia stopped there?

A. No, sir; I cannot tell you, because I did not take the time of it.

Q. Now, you say there is a lump below Grand Bayou? A. Yes, sir.

Q. Have you sounded on that lump ever? A. I have not sounded on it for over a month.

Q. Have you ever sounded on it? A. Yes, sir.

Q. What water did you last find? A. I found twenty feet.

Q. That is the shoalest water that is there? A. Yes, sir.

Q. How large a shoal is that; how long from north to south? A. It runs with the river.

Q. How long is it with the river? A. I suppose about thirty feet.

Q. About thirty feet long? A. Yes, sir.

Q. How far across? A. Not very far; it is very narrow.

Q. How much? A. I cannot judge that way, because I am no judge of distances.

Q. Is it as wide as this room across? A. Perhaps about that.

Q. About fifteen or eighteen feet? A. Yes, sir.

Q. You have not sounded on that shoal for a month? A. No, sir.

684 How many times have you ever sounded on it; this shoal below Grand Bayou? A. Sounded on it about four times since I have been a pilot.

Q. Is there any mark or sign to indicate the shoal? A. Nothing but our own marks what we go by.

Q. Nobody knows those marks except the pilots? A. That is all, I think, sir; and the surveyors, they *no* that; those that survey in there.

Q. The channel, as I understand you, runs to the westward there where the lump is. A. Yes, sir; a deep ship has to go eastward.

Q. So that all the ships take the eastward? A. Yes, sir; that is the general rule, but we have to take—but if we happen to meet ships on the east shore we have to take the west shore.

Q. That is, if you meet one. A. Yes, sir.

Q. How wide is the river there—the channel? A. Well, I suppose two or three hundred feet from that lump to the shore.

Q. Not more than two or three hundred feet? A. I am no judge of distances.

Q. You cannot tell? Perhaps it was three hundred feet? A. Yes, sir.

Q. Perhaps three times three hundred feet? A. Yes, sir.

685 Q. Are you always in the habit, when you board a descending vessel, to board her at the head of the passes? A. Yes, sir.

Q. You never board her anywhere else? A. No, sir.

Q. When you bring in a vessel where do you board her? A. Outside.

Q. How far outside? A. It is according to the weather. Frequently she is some ten or fifteen miles off the bar. In foggy weather we cannot see them until they be close in.

Q. Don't you know a great many vessels are brought in by the pilots down there and left just inside of the jetties? A. Left?

Q. Yes. A. Never saw one.

Q. Never saw one left? A. No, sir.

Q. What do they do with them? A. They take them up to the head of the station, and if it is a large draft vessel they take a boat ahead of her to take her through, and the pilot remains on board until they get out of the pass; that is, ten miles from the mouth of the river.

Q. If she has a tug-boat ahead of her? A. Yes, sir.

686 Q. What good is a pilot on board of the ship with a tow-boat ahead of her? A. Well, she can always show him the shoals and one thing and another.

Q. With a tow-boat ahead of her? A. Yes, sir.

Q. Don't the vessel have to follow the tun boat? A. No, sir; not if her pilot don't want to, or if he is going in any danger he can cut the hawser away and let the ship go.

Q. Anything else he is good for? A. He is good for insurance and one thing and another, I suppose.

Q. Do you know a sailing ship that comes to this port, that arrived here lately, by the name of Leviathan? A. No, sir; I don't believe I do.

Q. Arrived here lately with railroad iron on board? A. No, sir.

Q. You don't know her? A. No, sir.

Q. Now, I understand you to say that you never saw any charts of the jetties? A. No, sir.

Q. Or the approaches to the jetties? A. Never seen any issued.

Q. Issued by the Government? A. Never saw any issued by our pilots.

Q. Never heard of it? A. Yes, sir; none is issued to us.

Q. Did you ever hear of them? A. Yes, sir.

Q. Have you ever applied for any? A. No, sir.

Q. Never asked for any? A. No, sir.

687 Q. Do you know Captain Heuer, the Chief of Engineers? A. No, sir.

Q. Do you know any one down there who has charge of the jetty works? A. I did know one man, but who he is now, I forget. He is gone now.

Q. You don't know anybody down there now? A. Only Mr. Wright; I am acquainted with him.

Q. You never application to him for a chart? A. No, sir.

Q. Who is Mr. Wright? A. I believe he is the cashier, paymaster, or something.

Q. You say you were appointed pilot last June? A. Yes, sir.

Q. June, 1881? A. Yes, sir; the 16th.

Q. By the Governor? A. Yes, sir.

Q. Got your commission? A. Yes, sir.

Q. Were you regularly examined for it? A. Yes, sir.

Q. Who were the board of examiners that examined you? A. Mr. Wilson, Mr. Redmond, and Mr. Douglas.

Q. On their certificate the Governor gave you a branch? A. Yes, sir.

Q. What was your occupation before June, 1881? A. Boatman.

Q. Boatman? A. Yes, sir.

Q. Boatman for the pilots? A. Yes, sir.

Q. How long have you been that? A. Been boatman for the pilots for sixteen years.

Q. Did you ever do any other business? A. No, sir.

688 Q. Nothing else? A. Nothing, only sailor; going to sea for a time, and coming back again.

Q. Do you know the steamship Ranzani? A. No, sir

Q. Don't you know any such steamship? A. No, sir.

Q. Since you have been a pilot did you ever put any steamship ashore except the Australia? A. No, sir; the only one I ever got ashore.

Q. Now, when you were first asked by Mr. Beckwith as to what was the shallowest place on that lump on the outside of the jetties you answered him twenty-two feet? A. No, sir; fifteen.

Q. Let me get through my question. You answered him twenty-two, and afterwards you corrected yourself and said fifteen? A. I didn't understand Mr. Beckwith.

Q. I ask you why did you first say twenty-two feet? A. I didn't understand Mr. Beckwith. He asked me the shoalest water in the pass. We have all kinds of soundings on the bar. From the westward to the eastward we have all kinds of soundings.

Q. That is outside of the bar? A. Yes, sir.

Q. Outside of the bar? A. Yes, sir; outside of the bar on both sides of the bar.

689 Q. Both sides of the jetties? A. Yes, sir; we have to nine feet.

Q. Whereabouts is the nine feet? A. That is to the westward of the bar, sir.

Q. Then when you answered Mr. Beckwith that the shoalest place was twenty-two feet, you thought he meant the soundings outside the bar? A. Yes, sir; where you can go with a light draft vessel.

Q. He really was speaking to you about the lump. A. I didn't understand him to say the lump.

Q. When you understood him to say the lump you said the shoalest place was fifteen feet. A. Yes, sir.

Q. In answer to my question you answered that you had never found anything less than that? A. Nothing less, nothing more.

Q. Did you ever hear anybody speak about that lump, except he was a branch pilot? A. Well, no, sir; I have never had any conversation with anybody else to speak about it.

By Mr. BECKWITH:

Q. Tom Wilson that sent you in charge of the Australia is a branch pilot, is he not? A. Yes, sir.

690 16th. *Deposition of A. A. Douglas.*

Offered in evidence by the defendants in foregoing note of evidence.

United States Cir. Court, Fifth Judicial Circuit, Eastern Dist. of Louisiana.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et als.* } No. 9282. In equity.

Appearances: Jas. P. Hornor, Esq., for complainant; J. R. Beckwith, Esq., for defendants.

Witness: Capt. A. A. Douglas.

Testimony taken by consent on behalf of defendants, at the office of Joseph P. Hornor, Esq., 16 Carondelet street, New Orleans, La., Jan. 17th, 1882. Reported by Mark Breeden, Jr., notary and stenographer, 16 Carondelet street, N. O., La.

691 A. A. Douglas, sworn by Mark Breeden, Jr. notary public.

Examined in chief on behalf of defendants by Mr. Beckwith, as follows:

Q. What is your occupation? A. Branch pilot of the port of New Orleans.

Q. How long have you been a branch pilot? A. Since about twenty-two or twenty-three years—going on twenty three years.

Q. And continuously engaged in the business? A. Yes, sir.

Q. At what passes? A. At all of the passes; every one.

Q. Are you familiar with the South Pass now, as it is improved? A. Yes, sir.

Q. How long have you been familiar with it? A. Ever since it has been in operation.

Q. What is the character of that pass now? Is it a fixed channel, or shifting in any part? A. There are alterations from time to time—such as filling up and then scouring out again; also fills up. They use the dredge boats as they find it filling up.

Q. It is not fixed and permanent for the whole length? A. I do not consider it so.

Q. Are you familiar with the gulf at the mouth of the jetties? A. Yes, sir.

692 Q. Is there any change or shoaling off the mouth of the jetties? A. Well it has shoaled some to the upper end of the jetties—to the westward especially.

Q. Is there any shoal in the vicinity of the mouth of the jetties in any direction? A. There is one in the entrance, or right at the entrance.

Q. What is the character of it? A. Well, I cannot tell you much about the character of it any more than it is a mud lump

that is rising and goes away. Sometimes there is ——. I have seen twelve feet on it, and again eighteen and nineteen.

Q. How far is it out from the upper end of the artificial works of the jetties? A. Well, it is nearly between the ends of the two jetties.

Q. Is it off the mouth or in the mouth of the jetties? A. Right in the mouth.

Q. Have you kept track of the depth of water on that bunch or shoal for any considerable length of time? A. Well, we know it from time to time, of course, as we go in and out and sound over it. That is the only way; don't keep any track of it.

Q. What have been the various depths on that since it first appeared—to your knowledge? A. This lump at the entrance has been ever since they commenced using it in the jetties.

Q. I ask you what difference in the soundings have been noted? A. On this lump?

693 Q. Yes, sir. A. It has varied at times from twelve feet upwards to what is there now, nineteen feet, eighteen and a half feet.

Q. Is it so that a ship drawing eighteen and a half feet or nineteen feet now has to avoid it? A. At the present time, no.

Q. Has it been so at any time? A. Oh, yes, sir.

Q. Has there or not been a tendency to change in any portion of the channel between the jetties and the upper end of the pass? A. Yes, sir; there has; there has been times when it shoaled up and then cut away again.

Q. Any of the times when the deep water has moved either to the westward or the eastward in any way? A. Very little; of course, the deep water never altered a great deal; at times very little, either to the eastward or the westward.

Q. Is the channel a perfectly straight one from the mouth of the jetties to the upper end of the passes? A. No, sir.

Q. Is it your opinion as a pilot, and from your knowledge of the channel, from the entrance of the jetties to the upper end of the South Pass, that any person without a knowledge of

694 that channel could safely take a vessel drawing 24 feet of water through there? A. No, sir; I don't think they could.

Q. Is there any considerable amount of knowledge of the character of that channel and its course necessary to safely carry any heavy draughts in there? A. I think so.

Q. Would you yourself, as a pilot, feel perfectly safe to take a vessel of twenty-five feet draft in there, if you had not been through the in three months, without sounding prior to taking the vessel in? A. No, sir; I would not.

Objected to by Mr. Hornor as leading.

Q. Can you state, Mr. Douglas, the amount of property invested and owned by the Pilots' Association? A. I cannot tell you just this moment.

Q. Can you approximate it? A. It is over eighty thousand dollars.

Q. How much of that is invested in crafts and pilot boats? A. Nearly the whole of it.

Q. What is the character and description of the pilot boats owned by the association? Give a general description of them. A. We have three steamboats and two sailing boats—pilot boats.

695 Q. Are these vessels fitted and used exclusively for that purpose? A. For no other purpose.

Q. They are owned—the property of the association, are they not? A. Yes, sir.

Q. Now, will you state the usual course of operations there in taking out vessels and taking them in? How far out do you cruise? A. We have no particular distance to cruise; sometimes ten, fifteen, or five miles oftentimes; sometimes twenty and more; latterly we have cruised one hundred to one hundred and twenty miles.

Q. As you approach the South Pass is there any difficulty in—would there be any difficulty on the part of a perfect stranger to the coast in his location, himself knowing precisely where he was, approaching the coast? A. I should not suppose there would be any trouble; plenty of lights on the coast as far as approaching any particular point.

Q. What is the character of the water in depth off the South Pass jetties—I mean now—for a distance of five or six miles? A. Well, immediately off the South Pass the water deepens very quick; five miles off there is fifty fathoms of water.

696 Q. Is that portion of the Gulf of Mexico off the South Pass subject to gales and storms? A. Yes, sir; sometimes.

Q. Well, state whether it is a harbor off there? A. There is no harbor off the South Pass.

Q. It is then open, subject to the sweep of the Gulf off the South and Southeast winds? A. Yes, sir.

Q. To what extent is it exposed to the westerly and northerly winds? A. From the westerly winds they are protected in one of the bays; what we call Gordon Island Bay protects vessels from the westerly winds.

Q. Would it be perfectly safe, in your opinion, for a stranger to attempt to make that harbor without a pilot aboard, with any considerable draft of water? A. Well, I should not think it would.

Q. Now, what is the usual course for a pilot after he has

boarded a vessel coming up to the jetties; how far does he take her through the pass? A. How far does he have to take her?

Q. Yes, sir? A. All vessels—when it is necessary we take them about fifteen or sixteen miles from the jetty ends to the station at the head of the pass.

697 Q. In what cases is it not necessary? A. Many times vessels come in for orders, and they lay at the lower station—lay there a week or ten days, or a month.

Q. In some instances they go to sea from there, don't they? A. Yes, sir.

Q. Well, how far is the lower station in from the end of the jettie? A. About three miles.

Q. Do you know anything of the character of the bottom of the mouth of the Miss. river; whether it is or not subject to changes from any cause? A. Yes, sir; we perceive changes every year, such as mud lumps coming up and washing away.

Q. Will you explain what is the action, so far as it appears from your inspection of these mud lumps? A. The cause of them?

Q. No; their appearance and the changes they effect; well, a stranger would not know anything about the places if he had went away and would not for six months come back; it would change the appearance of things altogether, at the bars especially.

Q. Have you known any instance of those mud lumps rising so as to affect the depth of water in any point sud-

698 denly? A. Yes, sir.

Q. Will you describe some instances of it, if you please? A. I have seen several instances of it, both at Pass à l'Outre and Southwest Pass.

Q. Take the one at Southwest Pass; what change does it make in the depth of the water, and to what extent, over whet area? A. I have seen so many of them it is hard to choose any particular one; I remember the steamship Morning Star at one time laid on the bottom of Southwest Pass, and there was a lump formed below her in the channel—come up.

Q. How large was it, how large a shoal was it? A. I suppose it was about, as near as I can judge, fifty or seventy-five feet anyway.

Q. Have you known any larger than that? A. Yes, sir.

Q. Well, how large a one have you known? A. Well, I could not state exactly because I never taken any particular notice to sound around them to see how big they were; they were cut away about as quick as they came.

Q. Sometimes they came clear above the water, didn't they? A. Yes, sir.

Q. Is not that a peculiarity of that coast from Timbalier

699 light eastward to the mouth of the Southwest Pass? A. Yes, sir; I think it is.

Q. Well, can you state whether or not that is one of the instances of the peculiarities of the bar there, that pilots are on the lookout for? A. Yes, sir; it is; we generally keep the sounding every chance we get, every time we go in and out, to keep the run of the channel, else we would not know much about it.

Q. Now, can you state whether or not, with a ship, there is any difficulty in going in and out of the pass or any skill required to avoid meeting this lump where the draft is deep? A. Yes, sir; there is considerable care to be used; with all the care cannot always avoid meeting it either.

Q. Do you know of any instance where by skillful management you could not avoid it? A. Yes, sir; I have seen many a one where it could not be avoided.

By Mr. HORNER: You are speaking of this single one.

By Mr. BECKWITH: At the mouth of the South Pass.

Q. What difficulties are there in avoiding it; what do
700 they arise from in avoiding collisions with that lump? A. Well, there is a short turn to be made, and oftentimes these deep ships going out don't answer the helm quite as quick as you would expect them to, and if they don't why they are bound to hit it; that is sometimes, you cannot always judge what.

Q. Do you know whether a ship answers her helm as promptly in shoal water as she does in deep water? A. She does not.

Q. Do ships steer better in shoal water or in deep water? A. Deep water.

Q. Is there not a very considerable difference between the steering of a vessel, say in one hundred fathoms, than when she has not more than a foot or two of water under her keel? A. Yes, sir; there is a difference.

Q. Is it not very considerable? A. Yes, sir.

Q. Is it so noticeable that you can determine at any time, by the steering of the ship, whether she has deep water under her or is near the bottom? A. Most always tell by the steering.

Q. Now, in your opinion, would it be perfectly safe to
701 allow anybody, whether he knew the channel or not, to take ships drawing twenty to twenty-five feet through that channel at the South Pass? A. I should not consider it very safe for the vessel.

Q. Would it be safe for the channel? A. No, sir; I think not.

Q. What result, if any, do you think would come to the pass from the grounding of a large, long ship anywhere where the channel was narrow in that pass? It would have a tendency to block it up.

Q. How wide is the deep water channel in that pass after you get through the jetties into the old South Pass? A. Going in or out?

Q. I refer generally to the depth? A. It varies from one hundred feet to two hundred and twenty-five or two hundred and thirty feet.

Q. Do you know what the average length of vessels, of all steamers, that come here for freight is? A. I suppose some four hundred feet, and there is others three hundred and three hundred and fifty. I believe there has been some of them her over four hundred feet.

702 Q. Are there many places in the jetties between the mouth and the upper end of the pass where these large steamers can swing about, drawing twenty-five feet of water, can swing about? A. Several places where, I think, they would not have room.

Q. Do you know George A. Falconi? A. Yes, sir.

Q. Is he a member of the Association of Pilots? A. He is.

Q. Do you know whether or not he is a citizen of the State of Louisiana? A. Yes, sir; I know he is.

Q. Do you know whether the members of the Pilot Association are all citizens of the State of Louisiana? A. Yes, sir; they are.

Q. Do you know James M. Flinn? A. I am but slightly acquainted with him.

Q. Did you ever know of his being a pilot down there? A. Never heard of it.

Q. Do you know whether he ever resided in the State here? A. I have never seen him anywhere except aboard of a steamboat.

Q. Well, what, —— under what circumstances did you see him; was he ever employed on any steamboat navigating the Mississippi river, from sea to here, to your knowledge? A. He was captain of a steamboat outside of the river; that is

703 the only time I ever seen him.

Q. Do you know what trade? A. Towing business.

Q. At the mouth of the river? A. Yes, sir.

Q. How long ago was that? A. It has been, I think, three or four years ago; I am not certain.

Q. Has he been about there since, do you know? A. I have not seen him for two or three years, certain.

Cross-examination by Mr. HORNOR:

Q. Captain Douglas, about this mud lump that you say is in the mouth of the jetties, about what is the extent of that? A. Which?

Q. The mud lump that you state was in the mouth of the jetties? A. I cannot tell you the exact extent of it.

Q. Well, about how long and how wide is it? A. I suppose, it is probably seventy-five to one hundred feet long.

Q. And wide? [A.] It is not very wide; probably twenty-five feet; a small lump; but right in the way.

Q. That, I understand you to say, rises and falls, so that there is twelve feet of water on it sometimes, and sometimes nineteen? A. Yes, sir; I have seen twelve feet on it, and I have seen more.

704 Q. I understand I am right when I say between twelve and nineteen? A. Yes, sir.

Q. How long has that been there; when was it first discovered? A. It has been there ever since I knew anything about the jetties.

Q. Was it not there before the jetties? A. No; not that particular one that I know of.

Q. That one has been there ever since the jetties ——? A. Ever since they have been using the jetties.

Q. Is there not a chart of the jetties published by the Government? A. I don't know anything about it.

Q. Is there not a chart published by the Government? A. I don't know who publishes it.

Q. Is there not such a chart? A. I believe there is.

Q. Have you ever seen it? A. I never have examined one.

Q. You have never examined it? A. No, sir; I have no use for one.

Q. You never had the curiosity to examine one? A. No, sir.

Q. You don't know whether this mud lump is laid down on the chart or not? A. No, sir; I don't know.

Q. Is it a matter of notoriety not among all persons, but among pilots? A. They must have known it, for they have hit it often enough.

Q. Have vessels ever got aground there. A. Yes, sir.

705 Q. For any length of time? A. Well, I cannot say. I seen them stop there, on several occassions, twenty-four hours.

Q. Can you name any ships that were aground there twenty-four hours? A. I cannot recall the names just now.

Q. Can you recall the names of any that were aground there? more than an hour? A. No; I don't remember the names of the vessels; I remember the vessels being ashore there.

Q. Can you remember the name of any vessel being aground there at all? A. Oh, yes, sir.

Q. What was the name of that one? A. I remember an Australian bark. I won't be certain that I can call her name though.

Q. Do you know her, remember captain, the name? A. No, sir.

Q. Do you remember when she was on it? A. Two and a half years ago.

Q. How much was she drawing? A. Eighteen feet.

Q. How long did she stay on there? A. I think she stayed there twenty-four or twenty-six hours—sometime like that.

Q. How long did she get off? A. The current and the tow boats I believe eventually brought her off. The current
706 done much as the most of it.

Q. That is the only one you remember by name? A. Yes, sir.

Q. Now, you say that that lump, mud lump, being there interferred with navigation? A. It does with deep vessels certainly.

Q. If there is a mud lump such as you describe at the entrance of the channel, at the mouth of the channel, where the water varies from twelve to nineteen feet in depth, how does a twenty-five foot vessel go in there? A. There is a channel; you don't necessarily go over this mud lump to go in, but it is greatly in the way; the channel would be much wider.

Q. Then there is a channel by which you can go in and avoid this lump; is that it? A. They can avoid it by being very careful, I suppose.

Q. Then this mud lump does not block up the mouth of the channel by being in it? A. No, sir.

Q. A twenty-five foot vessel could be brought in and avoid it? A. Yes, sir; with a good tug, go clear of it.

Q. Could not a skillful mariner avoid that mud lump by means of the chart that is published of that pass?

A. No, sir.

707 Q. How do you know that, Captain Douglas? A. I am very well satisfied from experience they could not do it.

Q. That is all? A. Yes, sir.

Q. Because you say you have never examined it? A. No, sir; never examined it.

Q. Now, don't you think it possible, you having never examined it, don't you think it possible that a skillful mariner——. A. No, sir; I don't think it possible.

Q. My question is whether it would not be possible for a skillful navigator to take a twenty-five foot vessel in there with a chart? A. No, sir.

Q. He couldn't do it? A. I don't think it.

Q. Could a skillful navigator, who knew nothing about the passes except by the chart spoken of, take a twenty-five foot vessel in there with the chart? A. I don't think so.

Q. Now, sir, on which side of the mud lump—calling the side as you would by the flow of the river, that is the right bank

going down—which side of this mud lump is that channel by which you could take a twenty-five foot ship through?
708 A. On the left side.

Q. How wide is it? A. Well, I should not judge it to be over seventy-five to one hundred feet.

Q. How long is it? A. Which?

Q. That channel that is on the left side of that mud lump. A. As long as the mud lump, certainly.

Q. Seventy-five feet, about? Is there not such a channel on the other side of the mud lump? A. Not for a deep vessel.

Q. Not for a vessel drawing nineteen feet of water? A. No, sir; not a safe channel.

Q. Not a safe channel? But there is a channel of some kind there? A. Yes, sir.

Q. Drawing—where a vessel might pass drawing some nineteen feet of water? A. She might pass, certainly.

Q. Now, sir, is there not times when there are twenty-five feet of water on this mud lump? A. No, sir.

Q. Never? A. I have never seen it, and I have seen it pretty often.

Q. Could there have been without your knowing it? A. No, sir.

Q. You have been in constant employment there, so that it could not have been without your knowing it? A. We have somebody sounding there every day. If there are any
709 changes there we certainly would know it. We keep one another posted.

Q. You have stated there is no fixed and permanent channel in those jetties for the whole length. What do you mean by that? A. I mean there are alterations at times in the channel.

Q. Yes, sir. Well, now, is there not a fixed and permanent channel there for vessels drawing twelve feet of water for its whole length? A. For twenty feet, certainly.

Q. Now, is there not for eighteen feet? A. Well, that—I don't exactly understand your question.

Q. Is there not a fixed and permanent channel, and always permanent and fixed, whereby a ship drawing eighteen feet of water could safely pass up at any time there? A. With a pilot aboard, certainly.

Q. With or without? A. No, sir.

Q. Is there a channel through those jetties from end to end, all the time, of at least eighteen feet depth? A. There has been for the last two years.

Q. How much more than that—I mean through the South Pass? I call the jetties from the head of the pass to the sea.
710 Now, is there not a channel through there? Has there not

been for a year more than twenty-five feet of water from the head of the pass to the sea? A. No, sir.

Q. What has been the greatest depth that there has been? A. According to the United States reports, twenty-six feet.

Q. According to your own knowledge? I am getting to the United States reports. A. Twenty-five feet.

Q. I ask you if there had been twenty-five feet from the head of the pass to the sea? A. No, sir.

Q. I asked you the largest depth of water there had been—continuous depth of water—through those jetties from the head of the pass to the sea? What you base your ideas upon? What is the depth, the largest continuous depth? A. In the shallowest places about twenty-six feet, which is about what there is now; but it has not been for a year—inside of six months—been less than that.

Q. What has been the narrowest part the past year within the shallowest? A. The shallowest?

Q. Yes sir? A. Twenty-three feet.

Q. Now, sir, is it not, to your knowledge, that the reports of the Government officers make different reports from that? A. Yes, sir.

711 Q. It is? A. I have seen different reports.

Q. From the Government officers? A. Yes, sir.

Q. They make the depth of water much greater than you have given it? A. Yes, sir.

Q. Well, of course, I only ask this for a matter of formality; you pretend—— A. I am speaking from my own soundings.

Q. Do you pretend to say, from your own knowledge, that your statement is correct and the Government is wrong? A. I don't say anything about the Government's; I am speaking of my own sounding—what I know from my own sounding.

Q. The Government officers having by their sounding reports said differently from you, they must have said wrong? A. They may have had different measuring lead lines to sound with.

Q. Why do you think your lead lines more correct than theirs? A. We pretend to have ours right all the time we are sounding.

Q. Why do you think yours are better than the Government's? A. I don't think anything about it.

Q You simply prefer them? A. Yes, sir.

Q. Can you give a reason why you prefer them? A. I would trust my own soundings before I would anybody else's.

712 Q. Can you give any reason why you would trust your lead lines more than you would the Government's? A I trust it when I measure it.

Q. You trust your lead line because you measured the lead line, and you have not measured the Government's? A. Yes, sir.

Q. Now, captain, during these twenty-three or twenty-four

years that you say you have been a pilot down there, have you been employed in these services all the time, or have you been employed ashore a good deal? A. I have been ashore; I don't understand.

Q. Here is Captain Francis, for instance, he is ashore most of the time; all that time you have been in active pilot service? A. Certainly; I suppose it is all pilot service going, captain, ashore.

Q. That is what I am trying to get at, captain? A. I have been two or three turns ashore, and did pilot service then oftentimes.

Q. What have you been doing the time you had turns ashore; have you had charge of the business of pilots ashore? A. Yes, sir.

Q. Where were you ashore? A. At the mouth of the
713 river.

Q. How long would your turn ashore last? A. Sometimes three or four weeks.

Q. Only? A. That is all.

Q. Would it be every year, would you have a turn every year? A. No, sir.

Q. Do you mean to say that the different pilots down there take those turns monthly, each man has a right to take a turn ashore? A. It goes by election.

Q. It goes by election simply? A. Yes, sir.

Q. And you have not been more than two or three or four months on any such turn ashore? A. No, sir.

Q. You are one of the defendants in this case, captain, are you not? A. Yes, sir.

Q. You are a member of the Pilot Association down there? A. Yes, sir.

Q. All the pilots, all the branch pilots, commissioned by the Governor, are members of that association now, are they not? A. No, sir.

Q. Which are not? A. Several that are not.

Q. Can you name them? A. Yes, sir.

Q. I wish you would, if you please? A. There is Captain S.
B. Caldwell, John Conrad, Charles S. Clark, John L.
714 Dows, Wm. C. Davis, Chas. W. Elwell and George Woods;
I think that is all.

Q. Now, S. B. Caldwell, is S. B. Caldwell in active pilot service? A. Yes, sir.

Q. Down there at the South Pass? A. I don't know where he is. I have nothing to do with him. He is outside of our pilot association. I presume he is piloting; he is on a steamship.

Q. What steamship is he on? A. I think it is the City of Dallas.

Q. Then he don't do anything except pilot that steamship? A. He has been piloting the Wanderer.

Q. Did he pilot the Wanderer as an employee on board of her? A. I don't know anything about his arrangements; have nothing to do with him.

Q. He is now piloting the steamer City of Dallas? A. I think so.

Q. He is not engaged in the business of going out and hailing ships and bringing them in port, is he? No, sir; not at present.

Q. How long has he been? A. I don't know that he has ever been.

Q. Do you know in what capacity he is employed on board of the City of Dallas? Is it not as quartermaster? A. That
715 I cannot tell you.

Q. Then, John Conrad, what is he doing now? A. I don't know.

Q. When did you last see him? A. I have not seen him, I suppose, for six or eight months.

Q. What was he doing then? A. I cannot tell you; no occupation that I know of.

Q. How long since he has been engaged in doing a piloting business such as you are doing? A. I suppose going on three years, I think, as near as I can remember.

Q. Is he capable of doing it? A. I presume so.

Q. Nothing the matter with him? A. I have not seen him; I cannot tell whether anything is the matter with him now or not.

Q. I mean to your last knowledge? A. To my last knowledge he was not capable of doing anything. He was not well; he was sick.

Q. Charles S. Clark, where is he? A. I presume he is home, in the third district, somewhere.

Q. He has given up the piloting business? A. He is now sick; unwell.

Q. How long since he has been engaged in piloting? A. I think it is something over a year.

Q. Before that was he regularly engaged in piloting? A. Yes, sir.

716 Q. Same as you are? A. Yes, sir.

Q. What is the matter with him? A. I don't know what it is.

Q. Some disease that incapacitates him from duty? A. For the present it does.

Q. Was he a member of your association before he was taken sick? A. He was.

Q. How did he cease to become a member of it? A. By paying him off.

Q. By paying him off? A. Yes, sir.

Q. What do you mean by that? A. Paying him for his share stock.

Q. Then they bought him out? A. Yes, sir; they paid him *paid him* for it.

Q. Did you exact and pledge from him that he would not work for anybody else? A. No, sir.

Q. Took no pledge from him whatever? A. No, sir.

Q. John L. Dows, where is he? A. I cannot tell you.

Q. How long since you seen him? A. Have not seen him for a number of years.

Q. He has not been doing any piloting during those number of years? A. No, sir.

Q. Don't you recollect where he is? A. No, sir.

Q. Wm. C. Davis, where is he? A. I believe he is in New York.

Q. How long since he has quit piloting? A. I cannot tell you exactly; I suppose five or six years.

717 Q. Charles W. Elwell? A. He is down in Texas somewhere.

Q. How long since he has been piloting? A. He has not been piloting yet.

Q. Then he never was a pilot ever? A. Yes, sir; he is a pilot.

Q. Is he a pilot, but still never did any piloting? A. No, sir.

Q. And George Woods? A. He is at the mouth of the river.

Q. What is he doing there? A. He lives there.

Q. Does he carry on any business there? A. None at all.

Q. He don't do any piloting? A. No, sir.

Q. How long since he stopped? A. It is nearly two years.

Q. Any reason why he stopped piloting? A. From sickness.

Q. What is the character of his sickness? A. Blindness.

Q. How long has he been blind that way? A. Nearly two years, I believe; maybe a little more or less.

Q. All those men are not members of your association? A. No, sir.

Q. Then your association does number every pilot who is engaged in the piloting business at South Pass? A. Yes, sir.

Q. You have said already that you knew our friend Falconi? A. Yes, sir.

718 Q. Falconi was a member of the pilot association when he went to work as a pilot on the Mary Lee about a year ago, or more, don't you remember? A. Yes, sir.

Q. After he had working on the Mary Lee for a week or two—somewhere in that neighborhood—*in that neighborhood*—he went back to the association. What did the association do to induce him to do that? A. I don't think they done anything at all. Don't think they made him do anything at all, except to make him comply with the law, with his contract.

Q. How do you mean by that—make him comply? A. I think Mr. Beckwith can tell you.

Q. Did you make him pay any money? A. No, sir.

Q. Did you give him any money? A. No, sir.

Q. Gave him nothing at all? A. Not a cent.

Q. Who was it that went to him on the part of the association to induce him to quit the Mary Lee? A. I don't think any one went to him.

Q. You didn't? A. No, sir; I did not.

Q. And you don't know of anybody else that did? A. No, sir.

719 Q. And the association didn't give him anything for quitting the Mary Lee? A. Not a cent.

Q. Either directly or indirectly? A. Not that I am aware of.

Q. Didn't pay any of his debts, or give, make presents to his wife, or make presents to him? A. None at all.

Q. Nothing of any kind? A. Not a dime.

Q. By your rules did he not forfeit some fine or other thing by going on the Mary Lee as a pilot? A. I presume——

Q. Some penalties? A. They will forfeit, of course; he made a contract.

Q. How much was that? A. Forfeited his whole stock.

Q. Is there not a special penalty of some thousand to fifteen hundred dollars besides? A. Yes, sir.

Q. He forfeited that? A. He did not forfeit that.

Q. He incurred that? A. He would if he had stayed out, of course.

Q. He didn't incur it, because he came back? A. I suppose he would have incurred it if he had absented himself, had stayed out.

Q. Did they not promise him to remit the forfeiture of the stock? A. No, sir; no promises of any kind.

720 Q. Is it not a fact a fact that they did remit the forfeiture? A. Nothing done about it.

Q. No action ever taken? A. No, sir.

Q. You think no promises were ever made? A. No, sir; I am the only man that ever talked to him about it, and I never asked him to quit the Mary Lee, or promised anything either.

Q. You don't know anything about it? A. No, sir.

Q. There is our friend, Pliny Cox, he used to work as a pilot on the Mary Lee, you knew him? A. Yes, sir.

Q. How did he come to quit the Mary Lee? A. I don't know.

Q. Didn't your Pilot Association buy him? A. I don't know anything about it.

Q. Don't you know it by hearing it from the members of your association? A. That we gave money? no, sir.

Q. Come down to it. I ask you whether a certain set of people—whether you have not heard from the members of the association, or any member of the association—that when they got Captain Pliny Cox to leave the Mary Lee ———? A. As near as I could understand anything about it, he quit the Mary Lee because he thought he could not work any longer, or but
721 a very short time. I believe the only understanding that I ever heard, I think he was to be employed on our boats.

Q. Was he? A. He was for a time.

Q. For how long? A. I cannot tell you exactly how long.

Q. A month? A. Somewhere about that.

Q. In what capacity was he employed? A. As river pilot, I believe.

Q. As river pilot? A. I think so.

Q. Of what boat? A. Any boat we chose to put him on.

Q. On what boat was he employed? A. On the Underwriter, at the time.

Q. For about a month? A. I think so; not positive.

Q. How much salary were they to pay him? A. One hundred and fifty dollars a month.

Q. Did they pay him one hundred and fifty dollars? A. That is what we paid him.

Q. For how many months? A. I cannot tell you that.

Q. Are not they paying him one hundred and fifty dollars yet? A. I cannot say.

Q. You have no reason to believe that they are not? A. It may be, for all I know to the contrary.

Q. Have you not reason to believe they are paying him
722 one hundred and fifty dollars a month yet; you are a member of the association in active working order? A. Yes, sir.

Q. Have you not reason —— A. I cannot say whether they are at the present time or not.

Q. I ask you the question; have you not reason to believe that they are paying it? You say you cannot say. I doubt not you are perfectly correct when you say you don't know; but I ask you something else? A. At the present time I cannot say whether we are paying him, because I don't know.

Q. Have you not every reason in the world to believe that they are? A. I think we have have been paying it; I am not positive.

Q. You think—have you not every reason to believe that they are still paying it? A. I have some doubts of it.

Q. Not many? A. Well, I would not ——

Q. Who would know positively; who has charge of that part

of the business of the association? A. The captain of the "House," R. L. Wilson.

Q. Would not Captain Francis? A. I presume he will within a month or so.

Q. Now, don't you know it, either from your own knowledge, or from what you have heard from other members
723 of the association, that Pliny Cox was promised to be paid by the association one hundred and fifty dollars a month for quitting the Mary Lee, and that they are still paying him? A. No, sir; I don't know it.

By Mr. Beckwith: All this testimony relative to Pliny Cox is taken under objection; first, because it is not cross-examination, and secondly, because it is perfectly immaterial to any issue in the case.

By Mr. HORNOR:

Q. Now, Captain, don't you know—you say you don't—have you not heard from members of the association—your fellow-members of the association—that Pliny Cox was promised, if he left the Mary Lee, one hundred and fifty dollars a month, to be paid him by the association? A. No, sir; I did not.

Q. You never heard that from any member of the association? A. I have heard a great many things.

Q. I am asking you whether you heard that from the
724 members of the association. A. I have heard several different stories.

Q. You see you cannot get away from this question. I ask you what you heard; you say you don't know, because you don't know about this, and I fully appreciate your answer to that question; but I ask you whether you have not heard this from the members of your association? A. I have heard that he was employed for one hundred and fifty dollars as a river pilot. That was all there is about it.

Q. Have you not heard that he was to have that employment to be paid that one hundred and fifty dollars for leaving the Mary Lee; you never heard it? A. I don't know anything about the Mary Lee. I understood he quit her because he thought he would have to quit very shortly any way.

Q. Have you never heard that he was to be paid one hundred and fifty dollars for quitting the Mary Lee from the members of your association, have you never? A. I never heard it from anybody that had any authority.

Q. I won't let you go so easy as that; have you not heard it? A. I heard it from some of them no doubt. I
725 hear a great many things.

Q. You heard that from the members of your association? Now, captain, will you please explain me this question.

Are you not satisfied in your own mind as a man that this man Pliny Cox was paid one hundred and fifty dollars a month, and is still paid it, for leaving the Mary Lee? A. No, sir; I don't.

Q. You are not satisfied of that? A. No, sir; not that it is my knowledge of that.

Q. You are not satisfied of that in your own mind? A. No, sir.

Q. Now, about our other friend; what is his name? There was a suit instituted by the attorney general at the instance of the Pilots' Association against Pliny Cox, to oust him out of his position as a pilot. Do you know anything about that suit? A. I know about it.

Q. You know there was such a suit? A. Yes, sir: of course.

Q. That suit resulted in a judgment in favor of the pilots against Pliny Cox, depriving him of his office. You know that, don't you; in favor of the State, you know that? A. Yes, sir; certainly.

726 Q. Now, how much did your association pay Pliny Cox for not defending that case? A. Nothing that I ever heard of it.

Q. You never heard that from any member of your—— A. No, sir.

Q. After it was instituted didn't you hear from the members of your association that it was agreed between them and Pliny Cox that he was not to defend that suit? A. No, sir.

Q. Not from Captain Francis or from Capt. Wilson? A. No. sir.

Q. You know of no arrangement being made between the Pilot Association and Pliny Cox in regard to the defence of that case? A. No, sir.

Q. You never heard of any such arragement? A. No, sir.

Q. You don't know that it was a part of the agreement by which Pliny Cox was to be paid by the association one hundred and fifty dollars a month? A. No, sir.

Q. You never heard it from any member of your association? A. Never heard that he had anything to do with the case.

Q. Who? A. Pliny Cox.

Q. You didn't know that Pliny Cox was going to—was not going to defend the case before it was brought? A. No, sir.

727 Q. Nobody ever tell you that? A. No, sir.

By Mr. BECKWITH: I object to all that testimony relative to Pilny Cox, because it is not germain to the direct examination, nor is it cross-examination.

17th. The deposition of George A. Falconi, offered in evidence by the defendants in foregoing note of evidence, has already been transcribed on page 127 of this transcript.

18th. The deposition of Thomas P. C. Halsey, offered in evidence by the defendants in foregoing note of evidence, has already been transcribed on page 146 of this transcript.

19th. The affidavit of J. W. Black, sworn to before J. W. Gurley, master in chancery, June 16th, 1881, offered in evidence by defendants in foregoing note of evidence, has already been transcribed on page 79 of this transcript.

20th. The attested copy of the enrollment and license of the steam-tug Mary Lee, offered in evidence by the defendants
728 in the foregoing note of evidence, has already been transcribed on pages 402 and 405 of this transcript.

Hearing and Submission.

Extract from the minutes of January 9th, 1883.

November Term, A. D. 1882.

New Orleans, Tuesday, January 9th, 1883. Court met pursuant to adjournment. Present: Hon. E. C. Billings, district judge.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et als.* } No. 9282.

This cause came on to be heard at this term on bill, answer, replication and other proceedings in the cause.

Whereupon the complainant offered the following evidence in support of his bill, to wit:

1st. Record in case R. W. Francis *vs.* J. W. Black, No. 9111 of this court.

2d. George Osgood *vs.* J. W. Black *et al.*, civil district court.

3d. State *ex rel.* Att'y Gen'l *vs.* Hiram Follett, civil district court.

4th. State *ex rel. vs.* Pliny Cox, civil dist. court.

5th. Board of Administrators C. Hospital *vs.* Capt. H.
729 Geston, &c., civil dist. court.

6th. Richard Francis *et als. vs.* Geo. A. Falconi, No. 2142, civil district court.

7th. Act of partnership between the branch pilots before J. A. Quintero, notary public, May 27th, 1879.

8th. Map of the jetties.

9th. Pilots license of Captain Galvey..

10th. Deposition of James M. Flinn and accompanying documents.

11th. Deposition of C. Donovan and accompanying documents.

12th. Deposition of Robert Wilson and accompanying documents.

13th. Deposition of Bernard Michel and accompanying documents.
14th. Deposition of G. W. Adams and accompanying documents.
15th. Deposition of Wm. H. Leppert and accompanying documents.
16th. Deposition of Simon R. Ulmer and accompanying documents.
17th. Deposition of John Conner and accompanying documents.
18th. Deposition of Wm. H. Heuer and accompanying documents.
19th. Deposition of Geo. A. Sheldon, and accompanying documents.
20th. Exhibit D. Receipt of Falconi for $100 from Sheldon.
21st. Exhibit B. Order of chief engineer revoking order, &c., dated July 10, '81.
22nd. Exhibit A. Order of Secretary of War dated Sept. 5, '81.

And the respondent offered the following evidence in support of their answer, viz:

1st.

The act of association of the defendants as branch pilots
730 of the port of New Orleans, of May 27, 1879, before J. A. Quintero, notary public, being Exhibit A, filed with the affidavit of Richard Francis, filed in this cause March 23rd, 1881.

2nd.

The ratification of the act of Richard Francis, of the 4th of June, 1879, also filed on the 23rd day of March, 1881, as an exhibit to the affidavit of Richard Francis.

3rd.

Exhibit B, filed on the 23rd of March, 1881, with the affidavit of R. Francis, being the revocation of the license and commission of Hiram Follet, attested under the seal of the State.

4th.

Exhibit C, filed, of the same date, with the affidavit of Richard Francis, being the revocation of the license and commission of Pliny Cox as branch pilot, attested under the seal of the State.

5th.

Exhibit "1," filed, also of the same date, with the affidavit of Richard Francis, being attested copy of the judgment of the civil
731 district court for the parish of Orleans, in case State of Louisiana vs. Hiram Follett, No. 1366 of the docket of

said court, considering him an intruder in the office of branch pilot of the port of New Orleans, and ejecting him therefrom, enjoining him from acting as such pilot.

6th.

Exhibit "2," attached to and filed with said affidavit of Francis, being an attested copy of the judgment in case of State of Louisiana vs. Pliny Cox, No. 1367 of the docket of the civil district court for the parish of Orleans, wherein the said Cox is decreed an usurper into the office of branch pilot of the port of New Orleans, ejected therefrom with injunction.

7th.

Attested copy of the record in the case of Richard Francis *vs.* Geo. A. Falconi, No. 9282 of the docket of the civil district court for the parish of Orleans, with the judgment and injunction against Falconi.

8th.

Attested copy of the record and judgment in the case of State ex rel. Attorney General *vs.* Hiram Follett, No. 1366 of the
732 docket of the civil district court for the parish of Orleans.

9th.

Attested copy of the record in the case of the State ex rel. Attorney General *vs.* Pliny Cox, No. 1367 of the docket of the civil district court for the parish of Orleans.

10th.

Attested copy of the record in the case of Pliny Cox *vs.* George Osgood *et al.*, No. 1457 of the docket of the civil district court for the parish of Orleans.

11th.

Attested copy of the record in the case of Hiram Follett *vs.* Pilots' Association, No. 122 of the docket of the 24th judicial district court for the parish of Plaquemines.

12th.

Attested copy of the record in the case of Pliny Cox *vs.* John H. Gersdorf *et al.* Pilots' Association, No. 125 of the docket of the 24th judicial district court for the parish of Plaquemines.

13th.

An attested copy of the record in the case of George Osgood *vs.* J. W. Black *et als.*, No. 884 of the docket of the civil
733 district court for the parish of Orleans.

14th.

Deposition of J. C. Keyser.
15th. Deposition of John F. Small.
16th. " " A. A. Douglas.
17th. " " George A. Falconi.
18th. " " Thomas P. C. Halsey.

19th.

Affidavit of J. W. Black in the record sworn to on the 16th June, 1881, before J. W. Gurley, master in chancery.

20th. Attested copy of the enrollment and license of steam tug Mary Lee.

And the cause was thereupon argued by the counsel for the parties respectively and submitted. And the court took time to consider.

Decree.

Entered and filed April 26, 1883.

United States Circuit Court, Eastern district of Louisiana. In chancery,

JAMES M. FLINN
vs.
R. FRANCIS *et als.* } No. 9282.

This cause came on to be heard on the bill, answer,
734 replication, proofs, and exhibits at the November term of the court, of the year 1882, being the term last past, and was argued by counsel, and thereupon upon consideration thereof, and the court being of opinion that chapter 201, first session of the Forty-third Congress of the United States, entitled "an act to facilitate the execution of, and to protect certain public works of improvement at the mouth of the Mississippi river, approved June 1st, 1874," has superseded the laws of the State of Louisiana relative to pilots, formerly adopted by act of the Congress of the United States, so far as the works known as the "Eads' jetties," constructed by the United States Government in the South Pass of the Mississippi river, is concerned, it was ordered, adjudged, and decreed that the writ of injunction heretofore issued herein be made perpetual so far as to perpetually and forever enjoin the defendants, and each and all of them, viz: Richard Francis, W. T. Levine, C. W. Read, Wm. F. Higgins, John McLaughlin, Joseph Smith, John Ervine, R. M. Wilson, A. A. Douglass, Charles
735 Dennis, Philip Wuertz, Thomas D. Lewis, D. B. Morgan, Joseph Preble, Robert H. Tilford, Sr., Gustave Gersdorf, Francis Bailey, Oscar Shultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, Wm. E. Pendle-

ton, Henry Buttcher, Benjamin S. Ames, Peter Douham, Bernard Michel, Francis Lory, Charles S. Clark, E. C. Bannon, Francis Williams, A. L. Cloutman, Thomas Wilson, Robert T. Wilson, James W. Lyons, James Redman, William B. Turley, George Osgood, and their counsellors, officers, and agents, and their association, known as "the Branch Pilots of the Port of New Orleans, Louisiana," from annoying or harassing the complainant, James M. Flinn, his agents, or employees, or otherwise interfering with his or their occupation and business of piloting, or with his or their using the steamer Mary Lee as a pilot boat in and through the works and channel known as the Eads' jetties, constructed by the Government of the United States in the South Pass of the Mississipbi river; and the right of the complainant,
James M. Flinn, is hereby recognized to pursue his occu-
736 pation with the said steamer Mary Lee as a pilot boat, by himself, his agents, and employees, to pilot vessels propelled either by steam or sail in and out through the said Eads jetties, in the South Pass of the Mississippi river, under the provisions of the said act of Congress approved 1st June, 1874, and under the regulations of the Secretary of War, made in accordance therewith.

It is further ordered and adjuged and decreed that the said defendants pay the costs of these proceedings.

April 26th, 1883.

(Signed) EDWARD C. BILLINGS, *Judge.*

Draft submitted April 25th, 1883, and signed April 25th, 1883, and date altered accordingly.

(Signed) J. A. CH., *D'y C'k.*

Affidavit of Richard Francis. Filed April 30th, 1883.

Circuit Court of the United States, Eastern District of Louisiana.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et als.* } In Equity. No. 9282.

737 EASTERN DISTRICT OF LOUISIANA, *ss:*

Richard Francis, being duly sworn, deposeth and saith that he is one of the defendants in this cause and the agent of the other defendants; that he has been a branch pilot of the port of New Orleans for more than thirty years, and is well acquainted with the matters in this cause, and that the matters in dispute in this cause, exclusive of all costs, exceeds in value the sum of ten thousand dollars, and that under the protection of the injunction *pendente lite*, granted in this cause, the complainant and his associates

claiming the benefit of and protected by said injunction has inflicted on the defendants a pecuniary loss, already exceeding the sum of five thousand dollars, during the pendency of this action, and that said damage and loss to the defendants will continue so long as the decree in this cause is in force.

(Signed) RICHARD FRANCIS.

Sworn to and subscribed before me this 30th April, 1883.

[SEAL.] (Signed) THEO. GUYOL, *N. P.*

738 *Appeal. Entered and filed April 30th*, 1883.

Circuit Court of the United States, Eastern District of Louisiana.

JAMES M. FLINN
vs.
RICHARD FRANCIS *et al.* } No. 9282.

And now come the said defendants, by J. R. Beckwith, their solicitor, and suggest to the court that said defendants feel aggrieved by the final decree rendered against them in this cause at the present term of this court, as appears by the record of said decree, and that they believe that there is error in said decree to their prejudice, and that the value of the matters and rights in dispute in this cause exceeds the sum of five thousand dollars, exclusive of all costs, and that they desire to appeal from said decree to the Supreme Court of the United States.

Wherefore it is by the court in open court ordered that the said defendants be and are hereby allowed and granted an
739 appeal from the decree herein rendered against them at the present term of this court, to the Supreme Court of the United States, to be held at Washington, returnable to the next stated term of said court to be next held on the first day of said term, upon the defendant making and filing a bond herein, with good and sufficient surety, in the law directs, and that the same be a supersedeas pending said appeal.

Appeal Bond. Filed May 1st, 1883.

Know all men by these presents that we, Richard Francis, Wm. T. Levine, C. W. Read, Wm. F. Higgins, John McLaughlin, Joseph Smith, John Ervine, R. M. Wilson, A. A. Douglass, Charles Dennis, Philip Wuertz, Thomas D. Lewis, D. B. Moran, Jos. Preble, Robert H. Tilford, Gustave Gersdorf, Francis Bailey, Oscar Shultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, Wm. E. Pendleton, Henry Buttcher, Benjamin S. Ames, Peter Douham, Bernard Mi-
740 chell, Francis Lory, Chas. S. Clark, E. C. Bannon, Francis Williams, N. L. Cloutman, Joseph Preble, Thomas

Wilson, Robert Wilson, Jas. W. Lyons, Jos. Redmon, Wm. B. Turley, and George Osgood as principals, and J. W. Westerfield as surety, are held firmly bound, jointly and severally, unto James M. Flinn in the sum of five hundred dollars, lawful money of the United States, to be paid unto the said James M. Flinn, his heirs, executors, administrators, and assigns, for which payment well and truly to be made we bind ourselves and each for himself and each of —— heirs, executors, and administrators, firmly by these presents.

Dated, signed, and sealed this 1st day of May, in the year of our Lord eighteen hundred and eighty-three.

The condition of this obligation is such that whereas the above-bounden principal obligors having heretofore, to wit, on the 30th day of April, 1883, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the 26th day of April, 1883, by the circuit court of the United States for the fifth circuit, holding sessions in and for the eastern
741 district of Louisiana, in the suit of James M. Flinn *versus* the said Richard Francis and the other said principal obligors, being No. 9282 of the docket thereof:

Now, if the above-bounden obligors shall prosecute their said appeal to effect, and shall pay and answer all damages and costs if they fail to make good their plea, this obligation shall be null and void, but otherwise in full force and effect.

Richard Francis, W. T. Levine, C. W. Reed, Wm. F. Higgins, John McLaughlin, Joseph Smith, John Ervine, R. M. Wilson, A. A. Douglass, Charles Dennis, Philip Wuertz, Thomas D. Lewis, D. B. Morgan, Jos. Preble, Robert H. Tilford, Gustave Gersdorf, Francs Bailey, Oscur Shultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, Wm. E. Pendleton, Henry Buttcher, Benjamin S. Ames, Peter Douham, Bernard Michell, Frances Lory, Chas. S. Clark, E. C. Bannon, Francis Williams, N. L. Cloutman, Thomas Wilson, Robert Wilson, James W. Lyons, J. Redman, William B. Turley, George Osgood, and all of said principal obligors, by

(Signed) J. R. BECKWITH, [SEAL,]
Their Solicitor.

Sealed and delivered in presence of—
(Signed) E. HIESTAND.
(Signed) J. W. WESTERFIELD, [SEAL.]

742 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States, for the fifth circuit and eastern district of Louisi-

ana, do hereby certify that the foregoing 741 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of James M. Flinn *vs.* Richard Francis *et als.*, No. 9282 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 19th day of June, A. D. 1883.

Two (2) words interlined approved.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States dislrict judge for the eastern district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 19th day of June, A. D. 1883.

Three (3) words interlined approved.

EDWARD C. BILLINGS, *Judge.*

743 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States, to James Flinn, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a motion and order for an appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Richard Francis, Wm. T. Levine, C. W. Read, Wm. F. Higgins, John McLaughlin, Joseph Smith, John Ervine, R. M. Wilson, A. A. Douglas, Chas. Dennis, Phillip Wurtz, Thomas D. Lewis, D. B. Morgan, Jos. Preble, Robert H. Tilford, Gustave Gersdorf, Francis Bailey, Oscar Schultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, Wm. E. Pendleton, Henry Buttcher, Benjamin S. Ames, Peter Douhan, Bernard Michel, Francis Lory, Chas. S. Clark, E. C. Bannon, Francis Williams, N. L. Cloutman, Joseph Preble, Thomas Wilson, Robert Wilson, Jas. W. Lyons, Jos. Redman, Wm. B. Turley, and George Osgood are appellants, and you are appellee, to show cause, if any there be, why the decree rendered against the said Richard Francis, and all of said above-named appellants, as in said motion and order for an appeal mentioned,

should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 1st day of May, in the year of our Lord one thousand eight hundred and eighty-three. EDWARD C. BILLINGS, *Judge.*

744 United States Circuit Court, Eastern District of Louisiana.

RICHARD FRANCIS *et als.*, Appellants,
vs.
JAMES M. FLINN, Appellee. } No. 9282.

Citation to Appellee.

Marshal's Return.

Received May 2, 1883, by the U. S. Marshal, and on May 16th, 1883, I served a true copy of the within citation of appeal on James M. Flinn, appellee herein, by handing the same to Joseph P. Hornor, Esq., in person, in the city of New Orleans, the attorney for the aforesaid appellee, who accepted service for the aforesaid appellee, who at the time of said service was absent from the eastern district of Louisiana.

J. R. G. PITKIN,
U. S. Marshal Eastern Dist. of La.
By E. S. CURRY,
D'y U. S. Marshal.

Personally appeared before me, E. S. Curry, a lawful deputy of J. R. G. Pitkin, U. S. marshal for the eastern district of Louisiana, and makes oath that he served a true copy of the within citation of appeal on the appellee herein named, as set forth in his official return hereon.

E. S. CURRY,
D'y U. S. Marshal East. Dist. of La.

Subscribed and sworn before me May 16th, 1883.

F. A. WOOLFLEY,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

Endorsed on cover: E. Louisiana, C. C. U. S. No. 902. Richard Francis, William T. Levine, C. W. Read, William F. Higgins, John McLaughlin, Joseph Smith, John Ervine, *et al.*, Appellants, *vs.* James M. Flinn. Filed 14th July, 1883.

118-385

~~TRANSCRIPT OF RECORD.~~

Supreme Court of the United States,

OCTOBER TERM, 1883. No. 902.

RICHARD FRANCIS, WILLIAM T. LEVINE, C. W. READ, WILLIAM F. HIGGINS, JOHN McLAUGHLIN, JOSEPH SMITH, JOHN ERVINE, ET ALS., APPELLANTS,

versus

JAMES M. FLINN, APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

MOTION TO ADVANCE.

E. F. Hauser, Stationer and Printer, 30 Camp Street, New Orleans.

Filed .....

Supreme Court of the United States.

No. 902, October Term, 1883.

RICHARD FRANCIS, WM. T. LEVINE, ET AL.,

APPELLANTS,

versus

JAMES M. FLINN, APPELLEE.

Gentlemen.—You will please take notice that on Monday, the 17th day of December, at the city of Washington, at the opening of the court for that day or as soon thereafter as counsel can be heard, the appellants in this cause will move the honorable the Supreme Court of the United States that this cause be advanced from its order on the docket, and set down for trial on some day certain to be fixed by the court.

J. R. BECKWITH,
Of Counsel for Appellants.

To Messrs. Joseph P. Hornor,
A. G. Brice and J. W. Baker,
Counsel for Appellee.

Service admitted, New Orleans, November 24th 1883.

JOSEPH P. HORNOR,
Counsel for Appellee.

Supreme Court of the United States.

No. 902, October Docket, 1883.

RICHARD FRANCIS, WM. T. LEVINE, ET AL.,

versus

JAMES M. FLINN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

MOTION TO ADVANCE.

And now come Richard Francis, William T. Levine, C. W. Read, William T. Higgins, John McLaughlin, Joseph Smith, John Ervine, and all of said appellants, by the undersigned counsel; and suggesting and showing unto this honorable court that they were defendants in the circuit court as members of a voluntary association of the branch pilots of the port of New Orleans; that for a large number of years pilots and piloting at the mouth of the Mississippi river and port of New Orleans has been regulated and controlled by the statutes of the State of Louisiana, under the provision of some act of the legislature of said State; that all laws relating to pilotage, adopted prior to 1870, are compiled with and form a part of the Revised Statutes of the State, from section 2686 of the statutes until the end of the chapter devoted to that purpose; that the last named section provides

"that no person shall hereafter be appointed a pilot unless he be a lawful voter of the State of Louisiana, and be recommended to the governor by the board of examiners as being duly qualified as a branch pilot for the port for which he applies.

* * * * * * *

"Section 2688. Every branch pilot, before he takes upon

himself the execution of his duty, shall give bond to the governor of the State, with two sufficient securities, in the sum of one thousand dollars to be approved by the master and wardens of the port of New Orleans, or by the recorder of the parish of St. Mary."

Section 2689 provides a penalty of fine and imprisonment for refusal or neglect to discharge duty.

Sections 2691 to 2694 inclusive define the duties of pilots as to deportment and extent of cruising ground, compelling all pilots to cruise seaward from the mouth of the river five nautical miles.

"Section 2695. No pilot shall board any inward bound vessel, for the purpose of piloting such in, except from the pilot boats on their stations. Any pilot boarding any inward bound vessel in a small boat from the shore, not belonging or attached to the pilot boats, for the purpose of piloting such vessel in, shall be subject to a fine of one hundred dollars, to be sued for by the master and wardens by a civil process, before any court of competent jurisdiction; and said fine, when collected, shall be paid to the charity hospital of New Orleans for its use and benefit.

* * * * * * * *

"Section 2697. Every person offering to pilot a ship or other vessel shall, if required, exhibit to the commander of the ship or vessel his license as a branch pilot; and upon his refusing or neglecting to do so when demanded, he shall not be entitled to any remuneration for any service he may render as a pilot."

Section 2698 provides for the removal of pilots for drunkenness, carelessness and incompetency.

Section 2699 provides for receiving complaints of masters of vessels concerning misconduct of pilots on board vessels.

"Section 2701. The number of pilots for the port of New Orleans shall not be less than fifty.

"Section 2702. Every branch pilot of the port of New Orleans shall be owner or part owner of at least one decked pilot boat, of not less than fifty tons burden, and he shall keep such boat exclusively employed as a pilot boat. Every branch pilot not owning and employing a pilot boat as aforesaid shall be suspended from his office by the master and wardens of the port of New Orleans, and report the case to the governor, who may withdraw the commission or license of such branch pilot."

Section 2703 establishes the rate of pilotage dues for service.

"Section 2705. If any vessel, inward or outward bound, to or from the port of New Orleans, shall employ as a pilot a person who is not a duly licensed branch pilot, when a duly licensed branch pilot offers, the said vessel, her captain and owners, shall forfeit the sum of one hundred dollars, with privilege on said vessel, to be recovered before any court of competent jurisdiction, in the name of the charity hospital of New Orleans, for the benefit of the hospital."

Section 2706 provides for half pilotage when spoken and and refusing to take pilot.

"Section 2707. The duly licensed branch pilots of the port of New Orleans may, for the furtherance of their interests, form themselves into one or more voluntary private associations."

It is under this section that the appellants are associated and named in the bill.

Act No. 63 of the acts of the legislature, adopted April 13, 1877 (session laws 1877), page 103, enacts:

"Section 2. *Be it further enacted*, that whoever shall be guilty of acting or attempting to act as pilot to any vessel inward or outward bound to and from the port of New Orleans, who is not a duly licensed branch pilot, shall suffer fine not exceeding the sum of one hundred dollars, or imprisonment not exceeding two months, or both, at the discretion of the court."

It is enacted by section 4235 of the Revised Statutes of the United States:

"*Until further provision is made by congress, all pilots in the bayous, inlets, rivers, harbors and ports of the United States shall continue to be regulated in conformity with the existing laws of the States respectively wherein such pilots may be, or with such laws as the States may respectively enact for that purpose.*"

With intent to aid an attempted improvement of the Southwest Pass of the Mississippi River, by dredging the bar, under the direction and by the war department, then going on, congress, by an act entitled "*an act to facilitate the execution of and to protect certain public works of improvement at the*

mouth of the Mississippi River" (18 Statutes at Large, page 30), enacted—

"*That from and after the passage of this act the Secretary of War is directed to assume full control over this particular channel at the mouth of the Mississippi river, in course of execution or improvement by the government of the United States, so far as may be necessary to the carrying on and protection of such execution and improvements, and until the same shall be completed; and he may establish such regulations respecting the use of or passage through such channel as he may deem needful to fully protect the channel, and to facilitate the excavation improvement and use thereof. Such regulations shall be promulgated by publication thereof for ten days consecutively in two daily papers published in New Orleans, Louisiana, and the same may, in like manner, be changed from time to time; and any person interfering with, or obstructing, or attempting to obstruct the said improvements, and, any person who shall wilfully or negligently strand or sink any boat or craft in said channel, or cause any impairment, injury, filling up or shoaling therein, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding five hnndred dotlars, or imprisonment not exceeding six months, or both, at the discretion of the court.*" Approved June, 1874.

The said appellants and movers respectfully suggest that said legislation referred to and related only to the channel at Soutwest Pass, then being excavated by the United States goverment, and did not confer upon the Secretary of War sufficient power to render him competent to legislate and enforce his legislation, and that the effect of a disobedience of his rules and regulations, at most, could be only proof of malice and unlawful intent, in case of an indictment under the penal clause of the act; that any larger grant of power to him would have been an unconstitutional delegation of legislative power.

Afterwards, congress, in section 4 of an act approved March 3d, 1875, entitled, "*An act making appropriations for the repair, preservation and improvement of certain public works on rivers, harbors, and for other purposes,*" (18 Statutes at Large, page 463) accepted a proposition of James B. Eads and his associates to construct jetties, dykes, etc, at the *South Pass* of the Mississippi river, on terms and restrictions named in the

act; and did not take possession of the pass for any purpose, nor did it allow Eads to take even qualified possession of the pass; on the contrary, prohibited him from in any manner interfering with the free use and navigation of the pass; granting no power to any department to control even Eads, beyond inspection for the purpose of solving the question of compliance or non-compliance with his contract as connected with the measure of pay due him under the contract.

And the said appellants and movers show unto the court, that the Secretary of War, as they are advised, in error concerning his duty and power in the premises, assumed that he was in custody and control of the South Pass, as well as the Southwest Pass, although the government of the United States was in no manner engaged in the improvement of the South Pass, beyond such indirect relation thereto as grew out of its contract with Eads; and moved, in the act of June 1, 1874, as it were, by the flank twenty miles, to lay it on the South Pass, where there was no government control or work, on the 1st day of October, 1881, uttered and published, through one Heuer, a captain of engineers, the following novel pronunciemento:

"*United States of America,*
War Department,
Washington City, January 13, 1883

"Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed is a true copy of the rules promulgated by this Department on September 5, 1881, for regulating the navigation of the South Pass of the Mississippi river.

"In witness whereof, I have hereunto set my hand and caused the seal of the War Department to be affixed on the day and year first above written.

"[seal.] (Signed) ROBERT T. LINCOLN,
Secretary of War."

"*Rules Regulating the Navigation of the South Pass of the Mississippi River. Circular.*

"*New Orleans, La., October 1st, 1881.*

"In obedience to the instructions of the honorable Secretary of War the following regulations for the navigation of

the South Pass of the Mississippi river are hereby announced as in force from this date. Owners, agents and masters of vessels, pilots, and all others concerned, will govern themselves accordingly. Inasmuch as grave interests of all these parties and of the community in general will be conserved by the strict observance of these rules, the active co-operation for their enforcement and of all having the proper authority is expected and is earnestly requested.

"W. H. HEUER,
Capt. Engineers U. S. A.,
U. S. Inspecting Engineer for South Pass."

"*War Department,*
Washington City, September 5th, 1881

"Under the authority conferred upon the Secretary of War by the act of Congress approved June 1st, 1874, the following regulations relating to the navigation of the South Pass of the Mississippi river are hereby established:

"1. Steam vessels navigating the South Pass are required to reduce their speed to not exceeding six miles per hour, between a point five hundred yards above the South Pass lighthouse and the headquarters building; and a similar reduction shall be made in other parts of the pass when passing the boats, barges, floating mattresses, etc., that are being used in the construction of the jetties or the improvement of the channel.

"The South Pass is considered as embracing the entire extent of channel between the upper end of the works at the head of the pass, and the outer or sea end of the jetties at the entrance from the Gulf of Mexico.

"The point referred to, at five hundred yards above the lighthouse, between which and the headquater building vessels are required to reduce their speed, is marked by a post painted white on the western bank of the pass.

"2 All vessels anchoring in the pass (towboats without tows excepted) shall take position near the eastern bank of the pass, not less than five hundred yards above the lighthouse and below the island at the head of the pass; and vessels so anchoring shall put out such extra moorings as may be necessary to prevent their being blown athwart the channel, and thus endangering the navigation of the pass, whenever required to do so by the United States inspecting officer of the works for the improvement of the pass.

"3. All vessels navigating South Pass and going in the same direction shall not pass or attempt to pass each other, nor shall the vessel following approach the one ahead nearer than one mile distant.

'4. No master or other person in command of an ontward-bound vessel, drawing more than twelve feet of water, shall attempt to pass such vessel under his command, through the South Pass after dark, but shlal be required to anchor above the head of the passes till daylight, thus leaving the channel clear for upward-bound vessels.

'Regulations 3 and 4 do not apply to towboats without tows, steam pilot boats small steam launches, or vessels carrying mails to Port Eads, La.; but in their cases the trial of speed, or what could be called racing, is strictly prohibited in the pass.

'No master or person in command of a vessel drawing more than twelve feet of water, shall enter the jetty channel from sea until after a descending vessel, which has previously entered said channel from above has passed to sea; and likewise no such vessel descending the river, shall enter the channel at the head of the pass until after an ascending vessel, which shall have passed the head of Goat Island, has passed through the entrance at the head of the pass.

"6. All upward-bound vessels must keep to the right or nearest the east bank of the pass, giving the right of way to those bound in the opposite direction.

"7. All vessels discharging or waiting to discharge ballast at Port Eads must be moored to the bank by lines, and no vessel shall discharge ballast into the Gulf of Mexico within a distance of five miles from the sea end of the jetties; nor shall shes, or other refuse matter, which may be liable to cause a shoaling or filling up of South Pass, be dumped therein.

"8 The dredge boat, G. W. R. Bayley, shall have the exclusive right of way over all vessels navigating South Pass, while she is at work therein, and all vessels in passing her must be governed by her signals; she shall give the usual steam whistle for passing to her port or starboard, and this shall be responded to and obeyed by the passing vessel on the order of its master or pilot.

'Any violation of the foreoing regulations will be punished as a misdemeanor under the above cited act of congress, the penalty for which is a fine not exceeding five hundred dollars, and imprisonment for not more than six months, or both, in the discretion of the court.

"ROBERT T. LINCOLN,
Secretary of War."

(Printed record 297 *et seq.*)

With this condition of legislation and proclamation, the complainant filed his bill, the object being to have the South Pass declared under the control of the United States and the Secre-

tary of War, to the exclusion of all State jurisdiction and law; that the entire law of the State on the subject of pilotage at the port of New Orleans was overthrown as far as the South Pass is concerned, and any and all persons have the right to pilot vessels there without being subject to the code of State pilot laws.

The appellants and movers respectfully refer the court to the printed copy of the record submitted therewith for the character of the action.

After demurrer overruled, answer, replication and proofs, the court rendered and made the following decree (printed record, page 340):

"This cause came on to be heard on bill, answer, replication, proofs and exhibits at the November term of the court, 1882, being the term last past and was argued by counsel; and thereupon upon consideration thereof, and the court being of the opinion that chapter 201, past session of the forty-third congress of the United States, entitled, '*An act to facilitate the execution of and to protect certain public works of improvement at the mouth of the Mississippi River*,' approved June 1, 1874, has superseded the laws of the State of Louisiana relating to pilots formerly adopted by act of congress of the United States so far as the works known as the Eads' jetties, constructed by the United States government in the South Pass of the Mississippi river, is concerned, it was ordered, adjudged and decreed that the writ of injunction heretofore issued herein be made perpetual, so far as to perpetually and forever enjoin the defendants, each and all of them, to-wit: Richard Francis, W. T. Levine, C. W. Read, Wm. F. Higgins, John McLaughlin, Joseph Smith, John Ervine, R. M. Wilson, A. A. Douglas, Charles Dennis, Philip Wuertz, Thomas D. Lewis, D. B. Morgan, Joseph Preble, Robt. H. Tilford, Sr., Gustave Gersdorf, Francis Bailey, Oscar Schultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Shern, Wm. E. Pendleton, Henry Buttcher, Benjamin S. Ames, Peter Douhan, Bernard Michell, Francis Lory, Charles S. Clark, E. C Bannon, Francis Williams, N L. Cloutman per Jos. Preble, Thos. Wilson. Robt. Wilson, Jas. W. Lyons, Jas. Redman, Wm. B Turley, George Osgood, and their counsellors, officers and agents, and their association known as 'The Branch Pilots of the port of New Orleans, Louisiana,' from annoying and harrassing the complainant, James M. Flinn, his agents or employees, or

otherwise interfering with his or their occupation and business of piloting, or with his or their using the steamer Mary Lee as a pilot boat in and through the works and channel known as Eads' jetties, constructed by the government of the United States in the South Pass of the Mississippi river; and the right of the complainant, James M. Flinn, is hereby recognized to pursue his occupation with said steamer Mary Lee as a pilot boat, by himself, his agents and employees, to pilot vessels, propelled either by steam or sail, in and out through the South Pass of the Mississippi river, under the provisions of the said act of congress, approved June 1st, 1874, and under the regulations of the Secretary of War made in accordance therewith; and it is further ordered, adjudged and decreed that the said defendants pay all costs of these proceedings."

And they represent that the result of said decree has been in effect to create the belief that the entire legislation of the State, whereby unlicensed persons are prohibited from piloting vessels, has been repealed by either congress or the Secretary of War. That in order to meet the requirements of the law and the necessities of commerce, appellants have been compelled to invest a sum amounting to nearly one hundred thousand dollars, and to incur large expense in lookout stations, coal yards and coal supply. That with the exclusive right to pilot, conferred by law, the business is attended with no considerable profit. That nearly all of the commerce of the port of New Orleans passes through the South Pass of the river, and, under the license of the decree in this cause, incompetent and unlicensed persons, with no pilot boats or equipments, are engaged in piloting, contrary to the law of the State. That as soon as any attempt to compel them to desist is made they resort to the federal courts, and, citing the decree in this cause, obtain the most extraordinary orders and injunctions, of the character shown by the printed copies of the several bills with orders thereon, annexed hereto and made a part hereof.

That while it continues to be believed that congress has, with the aid of the Secretary of War, destroyed the pilot laws of the State, the laws are in effect suspended, and the entire system will be destroyed, and the fleet of steam pilot boats

scattered and driven into other trades; and the question whether vessels entering or leaving the port are seaworthy for want of a lawful pilot is constantly a matter of debate.

That appellants have urged the appellee's counsel to consent to submit the case to the court upon briefs, and procured the printing of the record for that purpose, and to that end. The counsel for appellee refuses to submit the cause under the rule of this court whereby, with the consent of parties, causes may be submitted without oral argument.

That if this cause must stand undetermined in this court until it is reached in due course, irretrievable injury will result, not only to the appellants, who are without any bond or security against damage, with a complainant pecuniarily irresponsible to any considerable extent; that during all of said period it must remain a matter of doubt what government, State or federal has control and jurisdiction over that portion of the South Pass of the Mississippi river included between the actual head or northern extremity of the South Pass and the sea end of the artificial jetties—a distance of fourteen miles. The State pilotage ground extending two miles up river, north of the north end of South Pass, and five miles outward from the extreme south end of the jetties, is, therefore, by the effect of the decree in this cause, if it be a lawful decree, cut in the middle by an interpolated federal jurisdiction, through the Secretary of War, amounting to fourteen miles of the entire twenty-one miles of statute pilotage ground; and, further, has the effect to render uncertain, for all vessels approaching or leaving the port, their condition of sea worthiness, by reason of equipment; whether there is actual sea worthiness, by reason of having on board a duly qualified pilot; whether a vessel must take a licensed pilot for the two miles above the head of the South Pass and the five miles outside the jetty walls; or whether it may take an oysterman or other incompetent pilot, not under bond or possessing qualifications required by law, through South Pass; whether such pilot is subjected to any rules, or whether alien-

age, non-residence or ignorance are disqualifications, and all other complications arising from disputed jurisdiction over the territory of the South Pass, involving questions of great public interest, as well as questions of vast importance to all masters and owners of vessels engaged in trade with the port of New Orleans.

Wherefore, considering the decree in this case, the matter of public interest involved, the conflict of territorial jurisdiction between the State and federal government, the importance of a prompt and speedy settlement of the questions involved, both to the parties to the record and in the regulation of commerce, appellants move this honorable court that this cause be taken from its regular order on the docket and advanced for a more speedy trial to such day as shall to your honor seem meet snd just, and set down for trial on some day certain to be fixed by this honorable court.

J. R. Beckwith
Sol. of Counsel for
Appellants

Supreme Court of the United States.

No. 902, October Term, 1883.

RICHARD FRANCIS, WM. T. LEVINE, ET AL.,

APPELLANTS,

versus

JAMES M. FLINN, APPELLEE.

And now comes the undersigned, James C. Egan, Attorney General, and for and in behalf of the State of Louisiana, and for the reason of the uncertainty concerning the existence and validity or force and effect of the statutes of the State of Louisiana relating to pilots and pilotage, caused and produced by the decree in this cause, as well as the conflict of jurisdiction over pilots and pilotage ground at the port of New Orleans, resulting from the doctrine declared to be the law by the Circuit Court in this cause; and by reason of the special direction and request of his excellency Samuel D. McEenery, Governor of the State, joins in the motion of said appellants that this honorable court advance this cause for trial, and that this cause be set down for trial at some early day certain.

JAMES C. EGAN,

Attorney General, State of Louisiana

UNITED STATES OF AMERICA.

CIRCUIT COURT OF THE UNITED STATES

For the Fifth Judicial Circuit and Eastern District of Louisiana.

No. 10,333.

FREDERICK SPINK

versus

RICHARD FRANCIS ET ALS.

Bill of Complaint—filed August 6, 1883.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Louisiana:

Frederick Spink, a citizen of the State of Louisiana, brings this bill of complaint against Richard Francis, individually and as agent of the other individual defendants hereinafter named, and against W. T. Levine, C. W. Read, Wm. F. Higgins, John McLaughlin, Joseph Smith, John Ervine, A. A. Douglas, Charles Dennis, Philip Wuertz, Thomas D. Lewis, D. B Morgan, Joseph Preble, Robert H. Tilford, Sr., Gustave Gersdorf, Francis Bailey, Os-

car Schultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, Wm. E. Pendleton, Henry Buttcher, Benjamin S. Ames, Peter Douhan, Francis Levy, Charles S. Clark, E. C. Bannon, Francis Williams, N. L. Cloutman, Thomas Wilson, Robert Wilson, James W. Lyons, James Redman, Wm. B. Turley, George Osgood, William Wilson, F. Lorey, Hugh Neil, G. A. Falconi, S. B. Caldwell. G. W. Cloutman, J. T. Small, John Nichols, James Burdick, and the Branch Pilots of the Port of New Orleans, an association under the laws of the State of Louisiana, of which said Richard Francis is the general agent and manager—all of said defendants being citizens of the State of Louisiana; and thereupon your orator complains and says:

1st. That your orator is a duly licensed pilot under the acts of congress known as the Steam Navigation Acts, and has proper and legal licenses to pilot vessels to and from the port of New Orleans and the sea, and has been engaged in that business for a considerable time previous to the present date, and is now thus engaged.

2d. That under the authority of various acts of congress, the government of the United States has taken possession of one of the mouths of the Mississippi river, known as South Pass, and has there constructed works in said pass, extending from sea through the whole extent of said pass, which are known as the Jetties, and has made there a deep

channel, navigable for the largest ship, whereas before only the smallest vessels, and those drawing less than eight feet of water, could navigate; that said government works and said channel are and always have been under the control, direction and government of the Secretary of War of the United States, by act of congress approved 1st June, 1874.

3d. That prior to the construction of said works, the said pass and its navigation were governed by the laws of the State of Louisiana "relative to the pilots of New Orleans," being sections 2701 to 2711 of the Revised Statutes of the State of Louisiana; but said laws and all laws of the State of Louisiana relative to pilotage, so far as said Jetties and said South Pass and said government works are concerned, were rendered nugatory, repealed and abolished by said act of congress, approved June 1st, 1874, entitled, "an act to facilitate the execution of and to protect certain public works of improvement at the mouth of the Mississippi river."

4th. That under the authority of said act of congress, and the regulations issued thereunder by the Secretary of War of the United States, your orator has the right to pursue his calling, and to pilot vessels to and from sea and the port of New Orleans, through said Jetties and through said South Pass, without interference from any one, so long as your orator shall observe and obey said regulations.

5th. That the defendants, wickedly and wilfully

conspiring and contriving to keep to themselves and among themselves the monopoly of all the piloting of vessels through said Jetties and said South Pass, have made and caused to be made an affidavit or affidavits, by Robert H. Tilford, one of the defendants herein, against your orator, before the Hon. Henry Wilkinson, Justice of the Peace for the Fourth Ward of the Parish of Plaquemines, charging your said orator with having piloted a vessel to sea through said Jetties and South Pass, without having a branch or commission from the State of Louisiana—an offence not known to the laws of the State of Louisiana or to those of the United States; and thereupon your said orator was arrested and held in custody by James Hitchcomb, the constable of said justice, for the space of ——— hours, when he was released under bond ———; that your orator is informed and believes, and so alleges, that he fears that, in pursuance of said combination against your orator, the said defendants will and have threatened to keep up said and similar persecutions and prosecutions of your orator, well knowing that they have no ground for the same, and that your orator cannot be ever tried for such unknown offences, with the end and purpose of driving away your orator from the pursuit of his business, to the end that defendants may have the monopoly thereof, thus inflicting an irreparable injury upon your orator, and needs will have such effect unless restrained by the power of this court;

all of which acts and doings and pretences of the said defendants are contrary to equity and good conscience, and tend to the manifest injury and oppression of your orator in the premises.

6th. That this case arises under the laws of the United States; and your orator is involved and interested to the extent of his daily business, and the same is worth to him much more than the sum of five hundred dollars.

In consideration whereof, and forasmuch as your orator is remediless in the premises, at and by the strict rules of the common law, and at and by the strict rules of law as administered in the courts of Louisiana, and is relievable only in a court of equity, where matters of this nature are properly cognizable and alone relievable; and to that end, that your orator may be protected pending these proceedings, he may have a remedial writ of injunction to issue, to protect the waste and destruction of his property and the destruction of his business, and, after due proceedings, said injunction be made perpetual, and defendants be perpetually enjoined.

Wherefore your orator prays leave to file this bill, that a remedial writ of injunction do issue herein, *pendente lite*, enjoining and restraining said defendants, and each and all of them, and their counsellors, officers and agents from interfering in any manner with your orator in his aforesaid business as pilot, and in his piloting vessels to and from sea, and the

city of New Orleans, through said Jetties and South Pass, and from making affidavits or causing affidavits to be made against your orator for doing such piloting, and from annoying, harrassing or otherwise interfering with your orator in his said business, and that after due proceedings had that said injunction be made perpetual.

And your orator further prays that your honors grant unto your orator writs of subpœna, to be directed to Richard Francis, individually and as agent of the other individual defendants hereinafter named, and as the general agent and manager of The Branch Pilots of the Port of New Orleans, and to W. T. Levine, C. W. Read, Wm. F. Higgins, John McLaughlin, Joseph Smith, John Ervine, A. A. Douglas, Charles Dennis, Philip Wuertz, Thomas D. Lewis, D. B. Morgan, Joseph Preble, Robert H. Tilford, Sr., Gustave Gersdorf, Francis Bailey, Oscar Schultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, Wm. E. Pendleton, Henry Buttcher, Benjamin S. Ames, Peter Douhan, Francis E. Lorey, Charles S. Clark, E. C. Bannon, Francis Williams, N. L. Cloutman, Thomas Wilson, Robert Wilson, James W. Lyons, James Redman, Wm. B. Turley, George Osgood, William Wilson, Hugh Neil, G. A. Falconi, S. B. Caldwell, G. W. Cloutman, J. T. Small, John Nichols, James Burdick, and the Branch Pilots of the Port of New Orleans, commanding them and each

of them, at a certain time and under a certain penalty therein specified, personally to be and appear before your honors, in this honorable court, and then and there answer all and singular the premises, and to stand by, abide and perform all such orders and decrees as to your honors shall seem meet in the premises; and your orator prays for all general and equitable relief as the nature of the case may require, and your orator will ever pray, etc., etc.

A. G. BRICE,
JOSEPH P. HORNOR,
FRANCIS W. BAKER,
Solicitors.

Frederick Spink, complainant, being duly sworn, deposes and says that he has read the foregoing bill of complaint, and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it is true.

FREDERICK SPINK.

Sworn to and subscribed before me this 16th day of July, A. D., 1883.

L. S.

EDGAR GRIMA,
Notary Public.

Order to Show Cause, and allowing Restraining Order. Entered and filed August 6th, 1883.

No. 10,333.

Frederick Spink vs. Richard Francis et als.

On consideration of the bill filed in this cause, and on motion of Joseph P. Hornor, one of the solicitors for complainant, it is ordered that this cause be set down for hearing, upon the motion of complainant for the writ of injunction as prayed for in the bill, upon Monday, the fifth day of November, 1883, at 11 o'clock a. m., at the United States Court Room, in the city of New Orleans, La.; and it appearing to the undersigned that there is danger of irreparable injury from delay, it is further ordered that a restraining order issue, and that the same be served on the defendants, enjoining and restraining them, according to the prayer of the bill, and that said restraining order remain in force until the hearing of said motion for injunction and until the further order of the court or a judge thereof; and that said defendants be served with a copy of this order and notice.

(Signed) DON A. PARDEE, *Judge.*

July 30th, 1883.

Marshal's Return.

Received August 7th, 1883, by the U. S. Marshal, and on the 8th day of August, 1883, I served a true

duplicate of this, the original order of court, on Richard Francis, defendant, by handing the same to him in person, in the city of New Orleans.

J. R. G. PITKIN,
U. S. Marshal.
By DAN. A. ROSE,
Dy. U. S. Marshal.

Subpœna in Chancery—issued August 6th, 1883.

UNITED STATES OF AMERICA.

The President of the United States to the Marshal for the Eastern District of Louisiana—Greeting:

You are hereby commanded to summon Richard Francis, individually and as agent of W. T. Levine, C. W. Read, Wm. F. Higgins, John McLaughlin, Joseph Smith, John Ervine, A. A. Douglas, Charles Dennis, Philip Wuertz, Thomas D. Lewis, D. B. Morgan, Joseph Preble, Robert H. Tilford, Sr., Gustave Gersdorf, Francis Bailey, Oscar Schultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Aberu, Wm. E. Pendleton, Henry Buttcher, Benjamin S. Ames, Peter Douhan, Charles S. Clark, E. C. Bannon, Francis Williams, N. L. Cloutman, Thomas Wilson, Robert Wilson, James W. Lyons, James Redman, Wm. B. Turley, George Osgood, William Wilson, F. Lorey, Hugh Neil, G.

A. Falconi, S. B. Caldwell, G. W. Cloutman, J. T. Small, John Nichols, James Burdick and the Branch Pilots of the Port of New Orleans, an association under the laws of the State of Louisiana, of which said Richard Francis is the general agent and manager, to appear before the honorable the judges of the Fifth Judicial Circuit of the United States of America, at a Circuit Court to be holden on the first Monday of September, 1883, then and there to answer a bill in chancery, filed against said Richard Francis, individually and as agent of said W. T. Levine and others above named, wherein Frederick Spink is complainant, and Richard Francis, individually and as agent of said W. T. Levine and others above named, are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, this sixth day of August, in the year of our Lord one thousand eight hundred and eighty-three, and the one hundred and eighth year of American independence.

L. S.

F. A. WOOLFLEY, *Clerk.*

The defendants are hereby notified that they are required to enter their appearance in the clerk's

office of the United States Circuit Court, on or before the first Monday of September, 1883, otherwise the bill may be taken *pro confesso*.

F. A. WOOLFLEY, *Clerk*.

Marshal's Return.

Received August 7th, 1883, by the U. S. Marshal, and on August 7th, 1883, I served a true copy of the within Subpœna in Chancery on Richard Francis, individually and as agent of the following named persons, to-wit: W. T. Levine, C. W. Read, Wm. F. Higgins, John McLaughlin, Joseph Smith, John Ervine, A. A. Douglas, Chas. Dennis, PhilipWuertz, Thomas D. Lewis, D. B. Morgan, Joseph Preble, Robert H. Tilford, Sr., Gustave Gersdorf, Francis Bailey, Oscar Schultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, Wm. E. Pendleton, Henry Buttcher, Benjamin S. Ames, Peter Douhan, Chas. S. Clark, E. C. Bannon, Francis Williams. N. L. Cloutman, Thos. Wilson, Robert Wilson, James W. Lyons, James Redman, Wm. B. Turley, George Osgood, William Wilson, F. Lorey, Hugh Neil, G. A. Falconi, S. B. Caldwell, G. W. Cloutman, J. T. Small, John Nichols, James Burdick, and the Branch Pilots of the Port of New Orleans, defendants herein, an association under the laws of the State of Louisiana, of which the said

Richard Francis is the general agent and manager, by handing a copy hereof to the said Richard Francis, in person, in the city of New Orleans.

J. R. G. PITKIN,
U. S. Marshal, Eastern Dist. of La.
By DAN. A. ROSE,
Dy. U. S. Marshal.

Restraining Order—issued August 6th, 1883.

United States of America—Circuit Court of the United States—Fifth Judicial Circuit and Eastern District of Louisiana—Frederick Spink vs. Richard Francis et als. No. 10,333.

The President of the United States to Richard Francis, individually and as agent of W. T. Levine, C. W. Read, Wm. F. Higgins, John McLaughlin, Joseph Smith, John Ervine, A. A. Douglas, Charles Dennis, Philip Wuertz, Thomas D. Lewis, D. B. Morgan, Joseph Preble, Robert H. Tilford, Sr., Gustave Gersdorf, Francis Bailey, Oscar Schultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, Wm. E. Pendleton, Henry Buttcher, Benjamin S. Ames, Peter Douhan, Charles S. Clark, E. C. Bannon, Francis Williams, N. L. Cloutman, Thomas Wilson, Robert Wilson, James W. Lyons, James Redman, Wm. B. Turley, George Osgood, William Wilson, F. Lorey, Hugh

Neil, G. A. Falconi, S. B. Caldwell, G. W. Cloutman, J. T. Small, John Nichols, James Burdick, and the Branch Pilots of the Port of New Orleans, an association under the laws of the State of Louisiana, of which said Richard Francis is the general agent and manager—

Greeting, whereas, it has been represented unto us in our said circuit court on the part of Frederick Spink, in a bill in equity lately exhibited against you and each of you, touching certain matters and things therein set forth; and, whereas, the Honorable Don A. Pardee, one of the judges of our said court, upon due consideration thereof, has made and allowed an order in said cause whereby you and each of you are required to show cause on the fifth day of November, 1883, why an injunction should not issue as prayed for in said bill of complaint; and, whereas, the said judge has granted and allowed an order restraining you and each of you, immediately and forthwith and during the pendency of said motion for an injunction to the full extent and effect as prayed for in said bill of complaint.

Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said Richard Francis, individually and as agent of said W. T. Levine and others above named, your agents, attorneys and servants and each of you are hereby commanded and strictly enjoined, under the penalty of the law, that you and each of

you absolutely refrain and desist from interfering in any manner with the said Frederick Spink in his business as pilot, and in his piloting vessels to and from sea and the city of New Orleans, through the Jetties and South Pass of the Mississippi River, and from making affidavits or causing affidavits to be made against said Frederick Spink for doing such piloting, and from annoying, harrassing or otherwise interfering with said Frederick Spink in his business. And that you, the said Richard Francis, individually and as agent of said W. T. Levine and others above named, your agents, attorneys and servants and each of you remain so inhibited and restrained until the further order of our said court in the premises.

Witness, the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this sixth day of August, in the year of our Lord one thousand eight hundred and eighty-three.

L. S.

F. A. WOOLFLEY, *Clerk.*

Marshal's Return.

Received August 7th, 1883, by the U. S. Marshal, and on August 7th, 1883, I served a true copy of the within restraining order on Richard Francis, individually and as the agent of the following named

persons, to-wit: W. T. Levine, C. W. Read, Wm. F. Higgins, John McLaughlin, Joseph Smith, John Ervine, A. A. Douglas, Charles Dennis, Philip Wuertz, Thomas D. Lewis, D. B. Morgan, Joseph Preble, Robert H. Tilford, Sr., Gustave Gersdorf, Francis Bailey, Oscar Schultz, Walter Jarvis, Thos. Craig, John F. Gersdorf, Edward Breen, John Ahern, Wm. E. Pendleton, Henry Buttcher, Benjamin S. Ames, Peter Douhan, Charles S. Clark, E. C. Bannon, Francis Williams, N. L. Cloutman, Thomas Wilson, Robert Wilson, James W. Lyons, James Redman, Wm. B. Turley, George Osgood, William Wilson, F. Lorey, Hugh Neil, G. A. Falconi, S. B. Caldwell, G. W. Cloutman, J. T. Small, John Nichols, Jamas Burdick, and the Branch Pilots of the Port of New Orleans, defendants herein, an association under the laws of the State of Louisiana, of which the said Richard Francis is the general agent and manager, by handing a copy hereof to the said Richard Francis, in person, in the city of New Orleans.

J. R. G. PITKIN,
U. S. Marshal, Eastern Dist. of La.

By DAN. A. ROSE,
Dy. U. S. Marshal.

Eastern District of Louisiana.—I, F. A. Woolfley, Clerk of the Circuit Court of the United States, for the Eastern District of Louisiana, do certify that the foregoing fifteen printed pages are true copies of the originals on file and of record in this office.

As witness my hand and the seal of the court, affixed this 26th day of November, 1883.

F. A. WOOLFLEY,
Clerk.

(Seal)

UNITED STATES OF AMERICA.

CIRCUIT COURT OF THE UNITED STATES

For the Fifth Judicial Circuit and Eastern District of Louisiana.

No. 10,334.

RICHARD J. WILLIAMS

versus

RICHARD FRANCIS ET ALS.

Bill of Complaint—filed August 6, 1883.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Louisiana:

Richard J. Williams, a citizen of the State of Louisiana, brings this bill of complaint against Richard Francis, individually and as agent of the other individual defendants hereinafter named, and against W. T. Levine, C. W. Read, Wm. F. Higgins, John McLaughlin, Joseph Smith, John Ervine, A. A. Douglas, Charles Dennis, Philip Wuertz, Thomas D. Lewis, D. B. Morgan, Joseph Preble, Robert H. Tilford, Sr., Gustave Gersdorf, Francis Bailey, Os-

car Schultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, Wm. E. Pendleton, Henry Buttcher, Benjamin S. Ames, Peter Douhan, Francis Lorey, Charles S. Clark, E. C. Bannon, Francis Williams, N. L. Cloutman, Thomas Wilson, Robert Wilson, James W. Lyons, James Redman, Wm. B. Turley, George Osgood, William Wilson, Hugh Neil, G. A. Falconi, S. B. Caldwell. G. W. Cloutman, J. T. Small, John Nichols, James Burdick, and the Branch Pilots of the Port of New Orleans, an association under the laws of the State of Louisiana, of which Richard Francis is the general agent and manager—all of said defendants being citizens of the State of Louisiana; and thereupon your orator complains and says:

1st. That your orator is a duly licensed pilot under the acts of congress known as the Steam Navigation Acts, and has proper and legal licenses to pilot vessels to and from the port of New Orleans and the sea, and has been engaged in that business for a considerable time previous to the present date, and is now so engaged.

2d. That under the authority of vàrious acts of congress, the government of the United States has taken possession of one of the mouths of the Mississippi river, known as South Pass, and has there constructed works in said pass, extending from sea through the whole extent of said pass, which are known as the Jetties, and has there made a deep

channel, navigable for the largest ships, whereas before only the smallest vessels, and those drawing less than eight feet of water, could navigate; that said government works and said channel are and always have been under the control, direction and government of the Secretary of War of the United States, by act of congress approved 1st June, 1874.

3d. That prior to the construction of said works, the said pass and its navigation were governed by the laws of the State of Louisiana "relative to the pilots of New Orleans," being sections 2701 to 2711 of the Revised Statutes of the State of Louisiana; but said laws and all laws of the State of Louisiana relative to pilotage, so far as said Jetties and said South Pass and said government works are concerned, were rendered nugatory, repealed and abolished by said act of congress, approved June 1st, 1874, entitled, "an act to facilitate the execution of and to protect certain public works of improvement at the mouth of the Mississippi river."

4th. That under the authority of said act of congress, and the regulations issued thereunder by the Secretary of War of the United States, your orator has the right to pursue his calling, and to pilot vessels to and from sea and the port of New Orleans, through said Jetties and through said South Pass, without interference from any one, so long as your orator shall observe and obey said regulations.

5th. That the defendants, combining and con-

triving to keep to themselves and among themselves the monopoly of all the piloting of vessels through said Jetties and said South Pass, have made and caused to be made an affidavit or affidavits, by one Robert T. Wilson, one of the defendants herein, against your orator, before the Hon. Henry Wilkinson, Justice of the Peace for the Fourth Ward of the Parish of Plaquemines, charging your orator with having piloted a vessel through said Jetties and South Pass to the sea, without having a branch or commission from the State of Louisiana—an offence not known to the laws of the State of Louisiana or to those of the United States; and thereupon a warrant for the arrest of your orator issued, and he has been arrested thereunder by constable Lasade, and your orator has been released under bond; and that your orator fears and is informed and believes, and so alleges, that, in pursuance of said combination against your orator, the said defendants will and have threatened to keep up said and similar persecutions and prosecutions of your orator, well knowing that they have no ground therefor, and that your orator cannot be ever tried for such unknown offences, with the end and with the purpose of driving away your orator from the pursuit of his business, to the end that defendants may have the monopoly thereof, thus inflicting an irreparable injury upon your orator, and needs will have such effect unless restrained by the power of this court; all of

which acts and doings and pretences of the said defendants are contrary to equity and good conscience, and tend to the manifest injury and oppression of your orator in the premises.

6th. That this case arises under the laws of the United States; and your orator is involved and interested to the extent of his daily business, and the same is worth to him much more than the sum of five hundred dollars.

In consideration whereof, and forasmuch as your orator is remediless in the premises, at and by the strict rules of common law, and at and by the strict rules of law as administered in the courts of Louisiana, and is relievable only in a court of equity, where matters of this nature are properly cognizable and alone relievable; and to that end, that your orator may be protected pending these proceedings, he may have a remedial writ of injunction to issue, to protect the waste and destruction of his property and the destruction of his business, and, after due proceedings, said injunction be made perpetual, and defendants be perpetually enjoined.

Wherefore your orator prays leave to file this bill, that a remedial writ of injunction do issue *pendente lite*, enjoining and restraining said defendants, and each and all of them, and their counsellors, officers and agents from interfering in any manner with your orator in his aforesaid business as pilot, and in his piloting vessels to and from the sea and the

city of New Orleans, through said Jetties and South Pass, and from making affidavits or causing affidavits to be made against your orator for doing such piloting, and from annoying, harrassing or otherwise interfering with your orator in his said business, and that after due proceedings had that said injunction be made perpetual.

And your orator further prays that your honors grant unto your orator writs of subpœna, to be directed to Richard Francis, individually and as agent of the other individual defendants hereinafter named, and as general agent and manager of The Branch Pilots of the Port of New Orleans, and to W. T. Levine, C. W. Read, Wm. F. Higgins, John McLaughlin, Joseph Smith, John Ervine, A. A. Douglas, Charles Dennis, Philip Wuertz, Thomas D. Lewis, D. B. Morgan, Joseph Preble, Robert H. Tilford, Sr., Gustave Gersdorf, Francis Bailey, Oscar Schultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, Wm. E. Pendleton, Henry Buttcher, Benjamin S. Ames, Peter Douhan, Francis Lorey, Charles S. Clark, E. C. Bannon, Francis Williams, N. L. Cloutman, Thomas Wilson, Robert Wilson, James W. Lyons, James Redman, Wm. B. Turley, George Osgood, William Wilson, Hugh Neil, G. A. Falconi, S. B. Caldwell, G. W. Cloutman, J. T. Small, John Nichols, James Burdick, and the Branch Pilots of the Port of New Orleans, commanding them and each

of them, at a certain time and under a certain penalty therein specified, personally to be and appear before your honors, in this honorable court, and then and there answer all and singular the premises, and to stand by, abide and perform all such orders and decrees as to your honors may seem meet in the premises; and your orator prays for all general and equitable relief as the nature of the case may require, and your orator will ever pray, etc., etc.

A. G. BRICE,
JOSEPH P. HORNOR,
FRANCIS W. BAKER,
Attorneys.

Richard J. Williams, complainant, being duly sworn, deposes and says that he has read the foregoing bill of complaint, and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it is true.

R. J. WILLIAMS.

Sworn to and subscribed before me this 16th day of July, A. D., 1883.

L. S.

EDGAR GRIMA,
Notary Public.

Order to Show Cause, and allowing Restraining Order. Entered and filed August 6th, 1883.

No. 10,334.

Richard J. Williams vs. Richard Francis et als.

On consideration of the bill filed in this cause, and on motion of Joseph P. Hornor, one of the solicitors for complainant, it is ordered that this cause be set down for hearing, upon the motion of complainant for the writ of injunction as prayed for in the bill, upon Monday, the fifth day of November, 1883, at 11 o'clock a. m., at the United States Court Room, in the city of New Orleans, La.; and it appearing to the undersigned that there is danger of irreparable injury from delay, it is further ordered that a restraining order issue, and that the same be served on the defendants, enjoining and restraining them, according to the prayer of the bill, and that said restraining order remain in force until the hearing of said motion for injunction and until the further order of the court or a judge thereof; and that said defendants be served with a copy of this order and notice.

(Signed) DON A. PARDEE, *Judge.*

July 30th, 1883.

Marshal's Return.

Received August 7th, 1883, by the U. S. Marshal, and on the 8th day of August, 1883, I served a true

duplicate of this, the original order of court, on Richard Francis, defendant, by handing the same to him in person, in the city of New Orleans.

J. R. G. PITKIN,
U. S. Marshal.
By DAN. A. ROSE,
Dy. U. S. Marshal.

Subpœna in Chancery—issued August 6th, 1883.

UNITED STATES OF AMERICA.

The President of the United States to the Marshal for the Eastern District of Louisiana—Greeting:

You are hereby commanded to summon Richard Francis, individually and as agent of W. T. Levine, C. W. Read, Wm. F. Higgins, John McLaughlin, Joseph Smith, John Ervine, A. A. Douglas, Charles Dennis, Philip Wuertz, Thomas D. Lewis, D. B. Morgan, Joseph Preble, Robert H. Tilford, Sr., Gustave Gersdorf, Francis Bailey, Oscar Schultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, Wm. E. Pendleton, Henry Buttcher, Benjamin S. Ames, Peter Douhan, Charles S. Clark, E. C. Bannon, Francis Williams, N. L. Cloutman, Thomas Wilson, Robert Wilson, James W. Lyons, James Redman, Wm. B. Turley, George Osgood, William Wilson, F. Lorey, Hugh Neil, G.

A. Falconi, S. B. Caldwell, G. W. Cloutman, J. T. Small, John Nichols, James Burdick and the Branch Pilots of the Port of New Orleans, an association under the laws of the State of Louisiana, of which said Richard Francis is the general agent and manager, to appear before the honorable the judges of the Fifth Judicial Circuit of the United States of America, at a Circuit Court to be holden on the first Monday of September, 1883, then and there to answer a bill in chancery, filed against said Richard Francis, individually and as agent of said W. T. Levine and others above named, wherein Richard J. Williams is complainant and Richard Francis, individually and as agent of said W. T. Levine and others above named, are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, this sixth day of August, in the year of our Lord one thousand eight hundred and eighty-three, and the one hundred and eighth year of American independence.

L. S.

F. A. WOOLFLEY, *Clerk.*

The defendants are hereby notified that they are required to enter their appearance in the clerk's

office of the United States Circuit Court, on or before the first Monday of September, 1883, otherwise the bill may be taken *pro confesso*.

F. A. WOOLFLEY, *Clerk*.

Marshal's Return.

Received August 7th, 1883, by the U. S. Marshal, and on August 7th, 1883, I served a true copy of the within Subpœna in Chancery on Richard Francis, individually and as agent of the following named persons, to-wit: W. T. Levine, C. W. Read, Wm. F. Higgins, John McLaughlin, Joseph Smith, John Ervine, A. A. Douglas, Chas. Dennis, Philip Wuertz, Thomas D. Lewis, D. B. Morgan, Joseph Preble, Robert H. Tilford, Sr., Gustave Gersdorf, Francis Bailey, Oscar Schultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, Wm. E. Pendleton, Henry Buttcher, Benjamin S. Ames, Peter Douhan, Chas. S. Clark, E. C. Bannon, Francis Williams. N. L. Cloutman, Thos. Wilson, Robert Wilson, James W. Lyons, James Redman, Wm. B. Turley, George Osgood, William Wilson, F. Lorey, Hugh Neil, G. A. Falconi, S. B. Caldwell, G. W. Cloutman, J. T. Small, John Nichols, James Burdick, and the Branch Pilots of the Port of New Orleans, defendants herein, an association under the laws of the State of Louisiana, of which the said

Richard Francis is the general agent and manager, by handing a copy hereof to the said Richard Francis, in person, in the city of New Orleans.

J. R. G. PITKIN,
U. S. Marshal, Eastern Dist. of La.
By DAN. A. ROSE,
Dy. U. S. Marshal.

Restraining Order—issued August 6th, 1883.

United States of America—Circuit Court of the United States—Fifth Judicial Circuit and Eastern District of Louisiana—Richard J. Williams vs. Richard Francis et als. No. 10,334.

The President of the United States to Richard Francis, individually and as agent of W. T. Levine, C. W. Read, Wm. F. Higgins, John McLaughlin, Joseph Smith, John Ervine, A. A. Douglas, Charles Dennis, Philip Wuertz, Thomas D. Lewis, D. B. Morgan, Joseph Preble, Robert H. Tilford, Sr., Gustave Gersdorf, Francis Bailey, Oscar Schultz, Walter Jarvis, Thomas Craig, John F. Gersdorf, Edward Breen, John Ahern, Wm. E. Pendleton, Henry Buttcher, Benjamin S. Ames, Peter Douhan, Charles S. Clark, E. C. Bannon, Francis Williams, N. L. Cloutman, Thomas Wilson, Robert Wilson, James W. Lyons, James Redman, Wm. B. Turley, George Osgood, William Wilson, F. Lorey, Hugh

Neil, G. A. Falconi, S. B. Caldwell, G. W. Cloutman, J. T. Small, John Nichols, James Burdick, and the Branch Pilots of the Port of New Orleans, an association under the laws of the State of Louisiana, of which said Richard Francis is the general agent and manager—

Greeting, whereas, it has been represented unto us in our said circuit court on the part of Richard J. Williams, in a bill in equity lately exhibited against you and each of you, touching certain matters and things therein set forth; and, whereas, the Honorable Don A. Pardee, one of the judges of our said court, upon due consideration thereof, has made and allowed an order in said cause whereby you and each of you are required to show cause on the fifth day of November, 1883, why an injunction should not issue as prayed for in said bill of complaint; and, whereas, the said judge has granted and allowed an order restraining you and each of you, immediately and forthwith and during the pendency of said motion for an injunction to the full extent and effect as prayed for in said bill of complaint.

Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said Richard Francis, individually and as agent of said W. T. Levine and others above named, your agents, attorneys and servants and each of you are hereby commanded and strictly enjoined, under the penalty of the law, that you and each of

you absolutely refrain and desist from interfering in any manner with the said Richard J. Williams in his business as pilot, and in his piloting vessels to and from sea and the city of New Orleans, through the Jetties and South Pass of the Mississippi River, and from making affidavits or causing affidavits to be made against said Richard J. Williams for doing such piloting, and from annoying, harrassing or otherwise interfering with said Richard J. Williams in his business. And that you the said Richard Francis, individually and as agent of said W. T. Levine and others above named, your agents, attorneys and servants and each of you remain so inhibited and restrained until the further order of our said court in the premises.

Witness, the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this sixth day of August, in the year of our Lord one thousand eight hundred and eighty-three.

L. S.

F. A. WOOLFLEY, *Clerk.*

Marshal's Return.

Received August 7th, 1883, by the U. S. Marshal, and on August 7th, 1883, I served a true copy of the within restraining order on Richard Francis, individually and as the agent of the following named

persons, to-wit: W. T. Levine, C. W. Read, Wm. F. Higgins, John McLaughlin, Joseph Smith, John Ervine, A. A. Douglas, Charles Dennis, Philip Wuertz, Thomas D. Lewis, D. B. Morgan, Joseph Preble, Robert H. Tilford, Sr., Gustave Gersdorf, Francis Bailey, Oscar Schultz, Walter Jarvis, Thos. Craig, John F. Gersdorf, Edward Breen, John Ahern, Wm. E. Pendleton, Henry Buttcher, Benjamin S. Ames, Peter Douhan, Charles S. Clark, E. C. Bannon, Francis Williams, N. L. Cloutman, Thomas Wilson, Robert Wilson, James W. Lyons, James Redman, Wm. B. Turley, George Osgood, William Wilson, F. Lorey, Hugh Neil, G. A. Falconi, S. B. Caldwell, G. W. Cloutman, J. T. Small, John Nichols, Jamas Burdick, and the Branch Pilots of the Port of New Orleans, defendants herein, an association under the laws of the State of Louisiana, of which the said Richard Francis is the general agent and manager, by handing a copy hereof to the said Richard Francis, in person, in the city of New Orleans.

J. R. G. PITKIN,
U. S. Marshal, Eastern Dist. of La.

By DAN. A. ROSE,
Dy. U. S. Marshal.

Eastern District of Louisiana.—I, F. A. Woolfley, Clerk of the Circuit Court of the United States, for the Eastern District of Louisiana, do certify that the foregoing fifteen printed pages are true copies of the originals on file and of record in this office.

As witness my hand and the seal of the court, affixed this 26th day of November, 1883.

F. A. WOOLFLEY,
Clerk.

(Seal)

118-385

OFFICE SUPREME COURT U. S.
FILED
MAR 28 1884
JAMES H. McKENNEY, Clerk

Supreme Court of the United States.

OCTOBER TERM, A. D. 1883.

No. 902.

RICHARD FRANCIS, WM. T. LEVINE, C. W. READ, ET AL, APPELLANTS,

versus

JAMES M. FLINN, APPELLEE.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

BRIEF OF APPELLANTS.

JAMES R. BECKWITH,
Counsel for Appellants.

W. F. Hansell, Stationer and Printer, 30 Camp Street, New Orleans.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1883.

No. 902.

RICHARD FRANCIS, WM. T. LEVINE, C. W. READ ET AL, APPELLANTS,

versus

JAMES M. FLINN, APPELLEE.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

BRIEF OF APPELLANTS.

In order to condense a statement of pleadings and facts and more clearly bring out the issues of fact and law, we have deemed it better to depart from the usual order, and first set out the history and character of the law relating to port pilots and port pilotage, at the date of filing the bill in this cause, as we understand and construe the legislation on the subject.

By section 8, article 1, of the federal compact, with other powers, congress was vested with power *"to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."* All laws regulating pilotage of domestic and foreign vessels to and from the ports of the union are undoubtedly *"regulations of commerce."*

If the constitution contained no other restriction, the power of congress would have been supreme in all matters relating

to pilots and pilotage of both foreign and domestic vessels. But States with seaports saw trouble in the future; believed that the unscrupulous use of this power by congress could so regulate pilot service and charges as to give preference to one port over another, make favorite ports free, and burden others with such charges as to effect a practical embargo or blockade.

To prevent this abuse of power, in section 9 of the same article a limitation was specially ordained in these words: NO PREFERENCE SHALL BE GIVEN BY ANY REGULATION OF COMMERCE OR REVENUE TO THE PORTS OF ONE STATE OVER THOSE OF ANOTHER."

When the first congress met in New York the difficulty of the situation became apparent. Different ports had different conditions of channel— some were intricate, some simple and deep. In New York the pilotage ground was short, and with the draft of that day pilotage was free from danger or difficulty; yet both New York and New Jersey quarrelled about the right to regulate pilotage in waters common to both States.

On the other hand, the pilotage ground in ports on the Delaware, Chesapeake and James was long, and pilotage could not be performed for fees which would be remunerative in New York.

The difficulty to be solved by congress was how, under the constitution prohibiting the adoption of any law not in fact exact in equality as to all ports, it could frame any *act* to fit the varied conditions existing at the different ports, where the length and the difficulty of pilotage ground made it unjust to adopt uniform rates for pilotage. When the constitution was adopted each of the States had its own pilot laws. Congress was asked to disturb and supplant the State with a federal system. The congress of 1789 found this difficult, if not impossible. After various attempts to solve the problem, that congress abandoned the task, and adopted the act of August 7th, 1789 (1 Stat. 54), which has since been carried into the U. S. Revised Statutes as section 4235, as follows:

"Until further provision is made by congress, all pilots in the bays, inlets, rivers, harbors and ports of the United States shall continue to be regulated in conformity with the existing laws of the States respectively wherein such pilots may be, or with such laws as the States may respectively enact for that purpose."

Thus it is seen that the men of the first congress, who where competent to establish the treasury, restore financial order out of bankruptcy chaos and confusion, create and set at work a judicial system which the experience of a century has shown to have been wise, felt themselves incompetent, or at least indisposed, to deal with the complex question of constitutional legislation on the complicated subject of pilotage at the various seaports, and dared not frame a federal act looking to that end.

No subsequent congress gathered intelligence or courage sufficient to propose any legislation on the subject, until the twenty-fourth congress, when, to settle a dispute in the courts concerning the rights of New York and New Jersey pilots, congress, by an act, approved March 2, 1837 (5 Stat. at Large 153), enacted, "That it shall and may be lawful for the master or commander of any vessel coming into or going out of any port situate upon waters which are the boundary between two States, to employ any pilot, duly licensed or authorized by the laws of either of the States bounded upon the said waters, to pilot said vessel to and from said port; any law, usage or custom to the contrary notwithstanding."

This act in substance is carried into the U. S. Revised Statutes as section 4236.

There was no further legislation on the subject of pilots until the thirty-second congress, when the act of August 30, 1852 entitled "*An act to amend an act to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam, and for other purposes,*" was passed (12 Stat. 61).

This act, by its title or text, never undertook to deal with any

foreign vessel, nor did it relate to any domestic vessel, not "*propelled in whole or in part by steam.*" It consisted of forty-four sections.

The first section provided that no license *to the vessel* or register shall be issued by the collector until the provisions of tha act are complied with; "and if any such vessel shall be navigated, *passengers on board* without complying with the terms of the act," the owner of the vessel shall be liable to the penalties set forth in the act.

Succeeding sections relate to precautions as to fire—how highly inflammable or explosive cargo shall be stowed when permitted to be carried.

Section 9 provides " that *instead of existing provisions of law* for the inspection of steamers and their equipment, and *instead of the present system of pilotage* of such vessels" [viz.: American vessels propelled by steam], "and the present system of employing engineers on board the same," the regulations of the act shall govern—that is, the *collectors of ports* and *supervising inpectors of districts* shall examine license and classify all engineers and pilots, and make it unlawful to employ any person as engineer or pilot on *such vessel* unless he held the certificate of the inspector. The act is very full. Pilots are required to take an oath and make reports, etc. All laws or parts of laws inconsistent with the act are repealed. The provisions of this act were very fully considered and construed in Steamship Company vs. Joliffe, 2 Wall. 450.

This act was the first act in which the federal government ever undertook to establish *pilots* of any character. Beyond doubt, if the construction of this act had fallen to counsel on the other side, or their real client, it would have been promptly settled, that congress *had acted on the subject of pilotage,* and that all State pilot laws had been swept out of existence, by repeal, at least, so far as American steam passenger vessels were concerned.

While this act was in force, in 1861, the State of California adopted a system of pilot laws very similar to that of other seaboard States—with half pilotage in the event of refusal to take pilot when offered. Soon after the State law went into effect a State pilot offered his services to pilot the American registered steamship *Golden Gate*, bound to Panama from the port of San Francisco. His services were refused. He sued in a State court for half pilotage; recovered fifty-two dollars. Writ of error was taken to this court, and is reported as Steamship Company vs. Joliffe, 2 Wall. 450.

It was insisted in this court that the federal act of 1852 had *superseded all State legislation concerning port pilotage recognized by the act of 1879*, above cited: that while the act of 1852 remained in force, the act of California, providing half pilotage, was illegal and void, as repugnant to the act of 1852.

This court held the cause over one term to enable the State of California to be called into the case; and held that the pilot laws of California *were not inconsistent with the act of 1852;* that the pretended pilots licensed under the act of 1852 were not pilots of any character, except *while attached to a vessel as part of her equipment*, and were in no sense "port pilots;" the court declaring:

"The clauses respecting pilots in the act [act 1852] relate, in our judgment, to pilots having *charge of steamers on the voyage, and not to port pilots;* and the provision that no person shall be employed or serve as a pilot who is not licensed by the inspectors has reference to employment and service on the *voyage generally, and not to employment and service in connection with ports and harbors.*"

As the act of 1852 was construed by this court, American steam vessels, *whether going foreign or coastwise*, were subject *to all of the* regulations of the States as to port pilotage, the office of the United States pilot being to pilot the vessel while *on her voyage* and *while out of port;* that the pilot licensed by the inspectors was no pilot when *detached from a vessel and not a part of her crew.*

There was a dissenting minority in the court, and the matter again passed into congress to settle and adjust. This was accomplished in 1871, when congress repealed the act of 1852, by revision, by the act of February 28, 1871 (16 Statutes, 440,, entitled, "*an act to provide for the better security of life on board vessels propelled in whole or in part by steam, and for other purposes*" This act was afterwards carried bodily into the United States Revised Statutes, under the title, "Regulation of Steam Vessels," page 852, section 4399 et seq.

Section 51 of this act carried into the Revised Statutes as section 4444 was adopted to settle the dispute between the majority and minority in the case of Steamship Company vs. Joliffe, and settled the controversy by enacting that "*nothing in this act shall be construed to annul* or affect any *regulation established by the laws of any State requiring vessels entering or leaving a port of any such State*, OTHER THAN COASTWISE STEAM VESSELS, *to take a pilot duly licensed or authorized by the laws of such State, or of a State situated upon the waters of such State.*"

Section 4444, Revised Statutes, takes up section 51 without change of text.

It is indeed strange that after the severe judicial contest bred of the act of 1852, and the struggle in congress resulting from the judicial squabble, resulting in the act of 1871, there should be a doubt concerning the power of pilots licensed by inspectors, and a belief that the inspectors can create a corps of port loafers to assault State pilotage regulations. We do not think it could exist outside of Louisiana.

Since the judgment in Steamship Company vs. Joliffe in 1864, and the act of February 28, 1871, and the compilation of that act in the Revised Statutes of 1874, particularly section 4444, there has been no room for apology for any person, being only a detached license of the local inspectors, to swear that he had a right to pilot any vessel on earth, domestic or foreign.

Any competent counsel would have informed him that his license did not make him a pilot of even an American vessel until he became attached to that vessel as a part of her equipment.

The licensee, to show that he has any right to pilot any vessel that floats *should show not only his certificate from the federal inspectors, but further show that he is attached as one of the crew to an American vessel, propelled in whole or in part by steam, and sailing coastwise, not foreign.* An unattached "inspector pilot," in contemplation of law, is a port loafer, with no duties or avocation connected with commerce or navigation.

In common with all of the States, pilotage in Louisiana has been or should be regulated by the statutes of the State, adopted by federal legislation and forming part of the laws regulating commerce. The pilot laws of this State are compiled in the Revised Statutes from sections 2686 until the end of the chapter devoted to that subject, with subsequent amendments, set forth below:

Section 2686 reads—

"That no person shall hereafter be appointed a pilot unless he be a lawful voter of the State of Louisiana, and be recommended to the governor by the board of examiners as being duly qualified as a branch pilot for the port for which he applies.

* * * *

"Section 2688. Every branch pilot, before he takes upon himself the execution of his duty, shall give bond to the governor of the State, with two sufficient securities, in the sum of one thousand dollars, to be approved by the master and wardens of the port of New Orleans, or by the recorder of the parish of St. Mary."

Section 2689 provides a penalty of fine and imprisonment for refusal or neglect to discharge duty.

Section 2691 to 2694 inclusive define the duties of pilots as to deportment and extent of cruising ground, compelling all pilots to cruise seaward from the mouth of the river five nautical miles.

"Section 2695. No pilot shall board any inward bound vessel, for the purpose of piloting such in, except from the pilot boats on their stations Any pilot boarding any inward bound vessel in a small boat from the shore, not belonging or attached to the pilot boats, for the purpose of piloting such vessel in, shall be subject to a fine of one hundred dollars to be sued for by the master and wardens, by a civil process, before any court of competent jurisdiction; and said fine, when collected, shall be paid to the Charity Hospital of New Orleans for its use and benefit.

* * * *

"Section 2697. Every person offering to pilot a ship or other vessel shall, if required, exhibit to the commander of the vessel his license as a branch pilot; and upon his refusing or neglecting to do so, when demanded, he shall not be entitled to any remuneration for any service he may render as a pilot."

Section 2698 provides for the removal of pilots for drunkenness, carelessness and incompetency.

Section 2699 provides for receiving complaints of masters of vessels concerning misconduct of pilots on board vessels.

"Section 2701. The number of pilots for the port of New Orleans shall not be less than fifty.

"Section 2702. Every branch pilot of the port of New Orleans shall be owner or part owner of at least one decked pilot boat, of not less than fifty tons burden, and he shall keep such boat exclusively employed as a pilot boat. Every branch pilot not owning and employing a pilot boat as aforesaid shall be suspended from his office by the master and wardens of the port of New Orleans, and report the case to the governor, who may withdraw the commission or license of such branch pilot."

Section 2703 establishes the rate of pilotage dues for service.

"Section 2705. If any vessel, inward or outward bound, to or from the port of New Orleans, shall employ as a pilot a person who is not a duly licensed branch pilot, when a duly licensed branch pilot offers, the said vessel, her captain and owners, shall forfeit the sum of one hundred dollars, with privilege on said vessel, to be recovered before any court of competent jurisdiction, in the name of the Charity Hospital of New Orleans, for the benefit of the hospital."

Section 2706 provides for half pilotage when spoken and refusing to take pilot.

"Section 2707. The duly licensed branch pilots of the port

of New Orleans may, for the furtherance of their interests, form themselves into one or more voluntary private associations."

It is under this section that the appellants are associated and named in the bill.

Act No 63 of the acts of the legislature, adopted April 13, 1877 (sessions laws 1877), page 103, enacts:

"Section 2. *Be it further enacted*, that whoever shall be guilty of acting or attempting to act as pilot to any vessel inward or outward bound to and from the port of New Orleans, who is not a duly licensed branch pilot, shall suffer fine not exceeding the sum of one hundred dollars, or imprisonment not exceeding two months, or both, at the discretion of the court."

Section 4235 of the Revised Statutes enacts:

"Until further provision is made by congres, all pilots in the bays, inlets, rivers, harbors and ports of the United States shall continue to be regulated in conformity with the existing laws of the States respectively wherein such pilots may be, or of such laws as the States may respectively enact for that purpose."

That these statutes have the double force of State and federal legislation has been too often decided to be open to doubt: *Cooley vs. Port Wardens, 12 How. 220; 7 Wall. 53; Ex parte McNeil, 13 Wall. 236; Wilson vs. McNamee, 12 Otto 572; Ex parte Hager, 14 Otto 520. In the Steamship Company against Joliffe, 2 Wall. 450*, this court expressly decided that the act of 1852 and its amendments, relating to pilots on American vessels propelled in whole or in part by steam, did not exempt an American steamship carrying passengers (foreign) from the penalties, requirements and regulations of the State pilotage laws of the State of California, passed and adopted eight years after the federal legislation on the subject of pilots on American vessels propelled in whole or in part by steam.

In 1874 and for some time prior to that date the government of the United States, under the direction of the Secretary of War, had been engaged in an ineffectual attempt to deepen the channel at the southwest pass of the Mississppi river by

dredging and excavating the bottom on the bar formed by the deposit of the river on meeting the waters of the gulf of Mexico. and believing that the towboat monopoly was engaged in a deliberate scheme of obstructing the progress of the work by wilfully stranding vessels on the bar, at the instance and request of the Secretary of War congress adopted an act entitled, "*An act to facilitate the excavation of and to protect certain public works of improvement at the mouth of the Mississippi river*" *(18 Statutes at Large, page 50), approved June 1, 1874.*

"That from and after the passage of this act the Secretary of War is directed to assume full control over the particular channel at the mouth of the Mississippi river, in course of excavation or improvement by the government of the United States, so far as may be necessary to the carrying on and protection of such excavation and improvements, and until the same shall be completed; and he may establish such regulations respecting the use of or passage through such channel as he may deem needful to fully protect the channel, and to facilitate the excavation, improvement and use thereof. Such regulations shall be promulgated by publication thereof for ten days consecutively in two daily papers published in New Orleans, Louisiana, and the same may, in like manner, be changed from time to time; and any person interfering with or obstructing or attempting to obstruct the said improvements, and any person who shall wilfully or negligently strand or sink any boat or craft in said channel, or cause any impairment, injury, filling up or shoaling therein. shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars, or imprisonment not exceeding six months, or both, at the discretion of the court."

On December 9th, 1874, the secretary of war made and promulgated, under supposed authority of this act of June 1, 1874, certain regulations, not in the record, beyond an extract contained in the following order of the war department, of date July 10, 1881: (Record, page 295.)

"OFFICE OF THE CHIEF OF ENGINEERS, U. S. A.,
Washington, D. C. July 10, 1881.

"The regulations from this office, dated December 9, 1874, made in conformity with the provisions of an act entitled, '*An act to facilitate the excavation of and to protect certain public*

works of improvement at the mouth of the Mississippi river,' approved June 1st, 1874, are, by the direction of the secretary of war, hereby rescinded. H. G. WRIGHT,

Chief of Engineers, Brigadier and Brevet Major General."

The following is an extract from the regulations of December 9, 1874, herein referred to:

"1. No master or person in command of a vessel drawing more than twelve feet of water shall attempt to pass a vessel under his command through any channel that the government of the United States is maintaining, improving or attempting to improve across a bar at the mouth of the Mississippi river, without having on board such vessel a branch pilot, licensed to pilot vessels across the bars at the mouth of the Mississippi river, as provided for by the statutes of the State of Louisiana."

It is clear that this rescinded "regulation," if it ever had any force, did not limit the pilot laws of the State, but, on the contrary, expanded the State legislation, by adding to the list of vessels subject to compulsory pilotage one class of vessels before that time exempt, under section 4444, United States Revised Statutes—to-wit: vessels propelled in whole or in part by steam, sailing coastwise under federal enrollment and license. Doubtless it was beyond the power of the secretary of war to make this regulation of 1874. and it never had the force of law as to that class of vessels.

For nearly three months the secretary of war was silent, made no effort to legislate, when, on Oct 1st, 1881, he caused to be promulgated a new code of navigation laws or "regulations," which seem to have been settled in terms on September 5, 1881; and not having under his control any "excavations" being made by the government of the Unifed States, he attempted to move the act of June 1, 1874 by the flank twenty miles—that is, from the *southwest pass* to the *south pass*, where the government was making no "excavations," but where Eads had a contract *at his risk*, with a guarantee that the government should not interfere with him, and an agreement on his part that he should receive no pay unless successful.

The following is a copy of the new regulations of 1881 (record, 295 *et seq.*):

"*Rules Regulating the Navigation of the South Pass of the Mississippi River. Circular.*

"NEW ORLEANS, LA., October 1st, 1881.

"In obedience to the instructions of the honorable secretary of war the following regulations for the navigation of the South Pass of the Mississippi river are hereby announced as in force from this date Owners, agents and masters of vessels, pilots, and all others concerned, will govern themselves accordingly. Inasmuch as grave interests of all these parties and of the community in general will be conserved by the strict observance of these rules, the active coöperation for their enforcement and of all having the proper authority is expected and is earnestly requested.

"W. H. HEUER,
"*Capt. Engineers, U. S. A.,*
'*U. S. Inspecting Engineer for South Pass.*"

"*War Department,*
Washington City, September 5th, 1881.

"Under the authority conferred upon the Secretary of War by the act of Congress approved June 1st, 1874, the following regulations relating to the navigation of the South Pass of the Mississippi river are hereby established:

"Steam vessels navigating the South Pass are required to reduce their speed to not exceeding six miles per hour, between a point five hundred yards above the South Pass lighthouse and the headquarters building; and a similar reduction shall be made in other parts of the pass when passing the boats, barges, floating mattresses, etc., that are being used in the construction of the jetties or the improvement of the channel.

"The South Pass is considered as embracing the entire extent of channel between the upper end of the works at the head of the pass, and the outer or sea end of the jetties at the entrance from the Gulf of Mexico.

"The point referred to, at five hundred yards above the lighthouse, between which and the headquarters building vessels are required to reduce their speed, is marked by a post painted white on the western bank of the pass.

"2. All vessels anchoring in the pass (towboats without tows excepted) shall take position near the eastern bank of the pass, not less than five hundred yards above the lighthouse and below the island at the head of the pass; and vessels so

anchoring shall put out such extra moorings as may be necessary to prevent their being blown athwart the channel, and thus endangering the navigation of the pass, whenever required to do by the United States inspecting officer of the works for the improvement of the pass.

"3. All vessels navigating South Pass and going in the same direction shall not pass or attempt to pass each other, nor shall the vessel following approach the one ahead nearer than one mile distant.

"4. No master or other person in command of an outward-bound vessel, drawing more than twelve feet of water, shall attempt to pass such vessel under his command through the South Pass after dark, but shall be required to anchor above the head of the passes till daylight, thus leaving the channel clear for upward-bound vessels.

"Regulations 3 and 4 do not apply to towboats without tows, steam pilot boats, small steam launches, or vessels carrying mails to Port Eads, La.; but in their case the trial of speed, or what could be called racing, is strictly prohibited in the pass.

"5. No master or person in command of a vessel drawing more than twelve feet of water shall enter the jetty channel from sea until after a descending vessel, which has previously entered said channel from above has passed to sea; and likewise no such vessel descending the river shall enter the channel at the head of a pass until after an ascending vessel which shall have passed the head of Goat Island, has passed through the entrance at the head of the pass.

"6. All upward-bound vessels must keep to the right or nearest the east bank of the pass, giving the right of way to those bound in the opposite direction

"7 All vessels discharging or waiting to discharge ballast at Port Eads must be moored to the bank by lines, and no vessel shall discharge ballast into the Gulf of Mexico within a distance of five miles from the sea end of the jetties; nor shall ashes, or other refuse matter, which may be liable to cause a shoaling or filling up of South Pass, be dumped therein.

"The dredge boat, G. W R. Bayley, shall have the exclusive right of way over all vessels navigating South Pass, while she is at work therein, and all vessels in passing her must be governed by her signals; she shall give the usual steam whistle for passing to her port or starboad, and this shall be responded to and obeyed by the passing vessel on the order of its master or pilot.

"Any violation of the foregoing regulations will be punished as a misdemeanor under the above cited act of congress, the

penalty for which is a fine not exceeding five hundred dollars, and imprisonment for not more than six months, or both, in the discretion of the court.

"ROBERT T. LINCOLN.
Secretary of War."

This action of the war department, unsupported as it is by one gleam of authority, must stand on the public records as the undoubted specimen of colossal assumption of undelegated power. Yet there is no attempt to repeal any statute or regulation of the State of Louisiana relating to pilots, his action cannot be quoted for such purpose without an apology.

Long prior to this last pronunciamento of the war department there had been special legislation relating to the improvement of *south pass.* In an appropriation bill, approved March 3, 1875 (18 Stat. at Large 436) a rider put on the bill while on passage accepted a proposition of James B. Eads and his associates for the improvement of south pass by *contract*, the terms of the contract being set out in full in the statute as adopted.

Section 4 of this act is very full and explicit in its provisions and will be found on page 463 *et seq.* United States Statutes at Large 463 In authorizing the contract with Eads it is replete with restrictions. He is not to be paid until success is assured. The only power conferred on the war department is, that of inspection and payment *after* successful result has been attained by Eads.

The work is entirely at the risk of Eads and his associates, no success, no pay.

"*Provided that no such structures or means employed*" (by Eads) "*shall hinder, delay or materially interfere with the free navigation of said pass.*"

"*The said Eads shall be untrammeled in the exercise of his judgment and skill, in the location design and construction of said jetties or auxiliary works.*"

With this condition of fact, statutes, proclamations and "regulations," the complainant filed his bill.

Statement of the Pleadings.

The bill was filed June 28th, 1881. (*Record*, page 1).

The complainant in substance alleges that he is a citizen of Florida, and brings his bill against Richard Francis, "individually" as well "*as agent for others*," and W. T Levine and thirty-seven others; one of the defendants being designated as "W. S. Cloutman per Joseph Preble," alleging the defendants to be "all citizens of the State of Louisiana."

That the complainant "is one-eighth owner of the steam pilot boat Mary Lee, decked and over fifty tons burthen; that his interest exceeds five thousand dollars; that this Mary Lee has been for some months past and still is engaged "in the business of a pilot boat" at *south pass*, known as the jetties.

That the *south pass* and the channel there has at all times, since the beginning of work there, been "under the control" of the Secretary of War; by virtue of the provisions of the act of congress of June 1, 1874 (above set forth by copy).

"That under the acts of congress the government of the United States has caused to be removed the obstruction in said channel known as the bar, and that said pass is subject to no other rules, regulations or laws, than such as have been passed by congress, *and those declared by the Secretary of War of the United States*, in pursuance of the authority vested in him by the acts of congress aforesaid, and such laws as congress may hereafter make relative to a channel."

That in conducting the business of piloting with the Mary Lee, complainant has conformed to "said laws and regulations"; that the master of the Mary Lee is George A Sheldon; that he "and the other officers in charge of said vessel are duly licensed under and according to the laws of the United States;" that Pliny Cox, George A. Falconi and Hiram Follett, "act on board as branch pilots, and who act as pilots on vessels inward and outward bound to and from and through to the *south pass*, are part owners of the Mary Lee and are duly

licensed, under and according to the laws of the State of Louisiana, as branch pilots of the State of Louisiana for the port of New Orleans."

That under the laws of the United States relative to south pass, and by reason of the constitution of the United States, complainant, has lawful right to have *Sheldon*, *Pliny Cox*, *Geo. A. Falconi* and *Hiram Follett*, "protected in the discharge of their duties and the vessel Mary Lee *protected* in the occupation of piloting" through the *south pass.*

That he "has a right to a *decree* recognizing his rights" to pilot vessels, and to a *decree* declaring all laws of the State of Louisiana void as repugnant to the rules and regulations of the Secretary of War and the constitution and acts of congress, etc.

That the defendants have conspired to injure his business of piloting; that their method of carrying out their conspiracy is to publish statements in newspapers (what the publications are is not stated), and chiefly by a resort to the courts; that they were instituted suits against *J. W. Black*, *George A. Sheldon*, *Hiram Follett* and *Geo. A. Falconi*, "*all of whom are part owners of the Mary Lee*; that in the suits complained of it is charged that *Black* and the others are towing vessels through the jetties and south pass mouth, without pilots; that *Follett* and *Cox* are not branch pilots, but usurpers and intruders into office.

That they charge, in a suit against Falconi, that although a branch pilot, he bound himself by contract with the defendants, not to pilot any vessel except with one for the associated branch pilots of the port of New Orleans, the defendants under an association of pilots, made under section 2707, R. S. of Louisiana; that this contract of association is void as contrary to good morals.

The prayer is for injunction *pendente lite* and perpetual, enjoining the pilots and the pilot association from any interfer-

ence with him, his vessel, or *Sheldon, Follet, Cox* or *Falconi, as* pilots, in piloting all manner of vessels. "*With a view of preserving from waste and destruction his business and property,* a final decree may be made, inhibiting the defendants from any further interfering with his business of piloting with the Mary Lee, as a pilot boat, and his using alleged pilots as pilots to the same, and that a decree issue, decreeing the contract of association of the regular branch pilots to be null and void, because *contra bones mores*—in violation of good law or good morals; and that the decree declare the South Pass independent and free of state pilotage laws and under the control of the Secretary of War."

The bill was sworn to by J. W. Black, agent of complainant, on the day of filing. The district judge, on *ex parte* application, granted a restraining order to the extent of the prayer for injunction, with a rule to show cause why injunction should not issue *pendente lite.* This rule was resisted. After holding the matter under advisement for months, the district judge allowed the injunction as prayed for. Record, page 36

The defendants appeared, and, before the hearing of motion for injunction, filed a demurrer, to the bill (record, page 9), alleging, for ground of demurrer, that the bill was bad for want of equity; that by complainant's own showing he had no lawful right to act as branch pilot or use the Mary Lee as a pilot boat, because he was not a citizen of Louisiana, but of Florida; that, taking the bill as true, the only persons named in the bill as having any right to use the Mary Lee for a pilot boat, are Follett, Cox and Falconi, who are each of them citizens of Louisiana, and not made parties to the suit; that the court was without jurisdiction of the controversy, by reason of the interest disclosed in Black, Sheldon and the above-named alleged pilots, who, to be branch pilots, must be citizens of the same state with the defendants, and necessary parties to the bill.

The demurrer and the affidavits in resistance of the motion for injunction were taken under consideration same time, on April 9th, 1881, and held by the court under advisement: and on the same day, June 13, 1833, the court overruled, the demurrer and granted the injunction, holding up the restraining order during this long period of advisement and incubation.

The defendants then answered the bill, putting at issue all of the allegations in the bill by specific denial; suggesting the want of necessary parties, and pleading in bar of any recovery that Black was the principal and managing owner of the Mary Lee, and a citizen of Louisiana; and that the alleged pilots, Follett, Cox and Falconi, had, by final decree of a competent court, been severally prohibited from acting as branch pilots, and could not lawfully use the Mary Lee as a pilot boat. (See answer, record, page 46 *et seq*).

To this answer there was a general replication. Record page 5. After the bill was filed, and before hearing, the Secretary of War modified the rules and regulations of September 5th, 1881, by substituting another proclamation, of date December 14th, 1881; the rules and regulations of the last date, being substantially the same as the rules published *ante* page 12, *et seq.*, with the exception that the secretary dropped all allusion to the act of congress approved June 1, 1874, as authority for law-making on his part, and also omitted the threat of fine and imprisonment to those who refused him obedience within his viceroyalty in South Pass. (See proclamation of December 4, 1881, record, page 301.)

The case was brought on for hearing, on bill, answer, replication and proofs, on January 9, 1883, before the district judge, holding circuit court (Pardee, circuit judge, having drawn and signed the bill as counsel before his appointment to the circuit court); and on the 26th of April, 1883, the district judge made the final decree appealed from. Record, page 340,

By the final decree it is decreed that the act of congress,

approved June 1, 1874, "has superseded the laws of the state of Louisiana relative to pilots." So far as Eads' jetties in South Pass "is concerned," the right of the complainant, James W. Flinn, to pursue the business of piloting, by himself or agents, "is hereby recognized;" and a wholesale, perpetual injunction launched at the defendants to prevent any interference with the "recognized" rights of Flinn and his agents. (Decree, record, page 340.)

ASSIGNMENT OF ERRORS.

First—The court erred in not dismissing the bill, on final hearing, for want of equity and jurisdiction on the face of the bill and record—

1. Because there is want of equity on the face of the bill.

2. Because on the face of the bill there is want of proper parties complainant, to-wit: John W. Black, Pliny Cox Hiram Follett and George A. Falconi, alleged co-owners of the Mary Lee, and George A. Sheldon, alleged pilot.

3. Because it appears that the alleged pilots and alleged co-owners of the Mary Lee are citizens of the State of Louisiana, and of the same State with defendants.

4. Because the defendants, in due form, suggested in their answer that the bill was defective for want of proper parties, to wit: Pliny Cox, Hiram Follett, George Falconi and John W. Black; and no notice was taken thereof, either by the complainant or by the court.

Second—The court erred in not dismissing the bill, for the reason, if not defective for want of parties, all allegations of fact therein contained, material in character, were and are overthrown and negatived by the answer and proofs in the record.

Third—The court erred in declaring, in final decree, that "chapter 201, first session of the forty-third congress of the United States, entitled *an act to facilitate the execution of and to protect certain public works of improvement at the mouth of the Mississippi river*, approved June 1st, 1874, has superseded

the law, of the State of Louisiana, relating to pilots, formerly adopted by the congress of the United States, so far as the works known as the Eads' jetties are concerned;" and in decreeing that the Eads' jetties are constructed by the United States.

Fourth—The court erred in decreeing perpetual injunction and costs against the defendants in the bill.

Fifth—The court erred in decreeing that James M. Flinn, a citizen of Florida, had a right to pursue the business of branch pilot through the South Pass of the Mississippi river, in form as set forth in said decree, record, pages 340, 341.

Sixth—The court erred in rendering the final decree herein in favor of complainant in the bill, in form and substance as the same was and is rendered, and should have dismissed the bill of complainant.

First assignment of error.—The demurrer should have prevailed.

The first ground of demurrer, that Flinn, the only complainant, disclosed no right to use the Mary Lee as a pilot boat in Louisiana waters was well taken.

The pilot laws of the State are adopted by section 4335, United States Revised Statutes. Section 2686 of Revised Statutes of Louisiana, adopted in 1870, provided that no person shall be appointed a pilot "unless he be a lawful voter of the State of Louisiana." Section 2688 requires all pilots to give a bond, in the sum of one thousand dollars, before entering on the duty or business of piloting in its ports. Under section 2702 he must be the owner or part owner of a decked pilot boat of not less than fifty tons burden.

The attempt to act, or at least the act of piloting vessels as a port pilot, if committed by Flinn, with no more right than he has disclosed in his bill, would be a violation of the penal code of Louisiana, and a crime. Act No. 63 of the acts of the legis-

lature, adopted April 13, 1877 (sessions laws 1877), page 103, enacts:

"Section 2. "*Be it further enacted*, that whoever shall be guilty of acting or attempting to act as pilot to any vessel inward or outward bound to and from the port of New Orleans, who is not a duly licensed branch pilot, shall suffer fine not exceeding the sum of one hundred dollars, or imprisonment not exceeding two months, or both at the discretion of the court."

The second special ground of demurrer—want of proper parties complainant—was well taken, and should have prevailed.

It is clear that a citizen of Florida cannot lawfully act as a branch pilot in Louisiana waters; and if the bill is to be taken to be a bill in behalf of the owners of the Mary Lee, to obtain a decree that such of her owners as pretended to be pilots had lawful right to use her as a pilot boat, then Hiram Follett, Pliny Cox, George A. Falconi and John W. Black, all alleged to be co-owners with Flinn, should have been joined as complainants. The bill was totally defective without their joinder.

Story, Eq. Pl., section 72.
Mitf. Eq. Pl. (Jeremy) 163, 164
Caldwell vs. Taggart, 4 Pet. 190.
West vs. Randall, 2 Mason, 190, 196.
Marshall vs. Benerly, 5 Wheat. 313.
Bank of Alexandria vs. Seton, 1 Pet. 299.
Story vs. Livingston, 13 Pet. 279.
Herndon vs. Ridgway, 17 How. 424,
Shields vs. Barrow, ibid. 130.

In the above cited cases the defect in parties was non joinder of defendants. In this case the non-joinder is of necessary and indispensable parties plaintiff.

The act of congress of February 28, 1839, 5 Stat. 321, and rule 47, equity rule, do not permit proceedings with non-joinder of an indispensable co-complainant. As the right to

pilot vessels is a personal right, attaching to the pilot himself, if even Flinn could claim property in the alleged personal right of Sheldon, Cox, Follett and Falconi, to pilot for hire, by virtue of any assignment of such personal, official privilege, the defendants have the right to have the alleged pilots in court.

Corion et al. vs. Millaudon, 19 How. 113.

Kerr vs. Watts, 6 Wheat. 550.

1 Daniel Ch. Pr. 190.

As the sole right to use the Mary Lee as a pilot boat depended upon the official right and authority of the alleged pilots to perform pilot service, their character as pilots, their authority to perform pilotage duty, to receive pay for pilot service, as well as their pretended ownership in the alleged pilot boat, was at issue—in fact, the main question in litigation. There can be no possible doubt that Black, as co-owner of the Mary Lee, and Follett, Cox and Falconi, as alleged co-owners and pilots, and Sheldon, as federal licensee under the federal navigation acts, were to be benefitted by the decree if in favor of the complainant, and would have been decreed without authority or character as pilots if the decree had been against the complainant. They were indispensable parties to the bill; their non-joinder was fatal.

It is possible that the bill, if it presents any case, presents a case of which the court, under the act of 1875, had jurisdiction *ratione materiae.* If so, there exists no possible excuse for the non-joinder of parties.

The second assignment of error, that the court paid no heed to the suggestion of want of parties made in the answer, needs no discussion; the error is manifest.

The third assignment of error, that the court erred in not dismissing the bill for want of equity cannot be made more patent by argument. The condition of both federal and state legislation has already been given.

The bill, if it ever had any honest purpose, was filed to obtain judicial sanction for the use of the Mary Lee as a pilot boat, in the interest of the Florida part-owner and the alleged pilots, whose names are set forth; and further to obtain a judicial declaration that "*your orator has the right, as owner, to have the officers—to-wit: the captain, G. A. Sheldon and Pliny Cox, George A. Falconi and Hiram Follett—protected* in the discharge of their duties, and the Mary Lee protected *in the occupation of piloting in and out throagh said channel, known as the jetties, to and from sea; and your orator has a right to have a decree recognizing his right to render service as a pilot boat to all vessels to or from sea, through said South Pass or channel, when any one of said branch pilots, employed by complainant, should be on board said vessel.*"

This declaration of right, for the admonition and direction of the chancellor, is more extraordinary than logical or modest. The law contemplates that a pilot shall receive the *entire fee, or statute dues*, for pilotage, as his own absolute remuneration for labor and skill in piloting, and permits no greater sum to be demanded. If it was not contrary to public morals and policy to permit Flinn to rob a pilot of a part or the whole of the pilotage dues earned by him, through the agency of some contract or convention, it is clear that before Flinn can claim to be part owner of branch pilot dues, earned by the alleged pilots, he must *show some contract relation* between himself, Cox, Follet and Falconi, the pilots named in this suit, by which he has been conceded or granted some share of their earnings. The bill no where avers or discloses any such contract or relation. If it had done so the contract would be void, as a speculation in statute dues, contrary to public policy. Flinn claims his alleged right to "have a decree" of the character nominated by him to the court—

1st. Because the Secretary of War acting under the provisions of the act approved June 1, 1874 (given *in extenso* in the statement of facts, ante page 10), has taken full and com-

plete possession of the South Pass, and struck with death, so far as that pass is concerned, the entire chapter of State statutes relating to pilots and pilotage; that the South Pass is under the absolute "control" of the Secretary of War;—*ergo*, although the Secretary of War has not, up to this time, uttered one word of repeal of any law, yet all pilot laws of the State of Louisiana are either repealed or under permanent suspension.

2d. That although not himself a pilot, or possessed of any personal franchise, either state or federal, in its origin, he has on board his vessel persons who, as he avers, possess the personal right to pilot vessels for dues or fees; between himself and whom he avers the existence of no open or even clandestine treaty or contract, by which they have agreed to subsidize him or convey to him any part of the statute fees which accrue to the lawful branch pilots for the performance of their duties and functions as pilots, and whom he does not join with him as co-complainants. It seems the alleged pilots have no quarrel with the defendants, yet Flinn, the complainant, takes up a quarrel for them, and volunteers, so far as his bill discloses, to fight battles for them out of pure love of contention and dispute.

3d. That the defendants, being duly licensed branch pilots, disputing the right of his *protegés* to pilot, have submitted the question of their rights to the courts, state and federal, and have tendered for judicial solution the following questions, as shown by the bill, viz.: that whether the owners of the Mary Lee are unlawfully towing vessels, subject to compulsory pilot service, out to sea, without a lawful pilot in charge; whether Hiram Follett and Pliny Cox are unlawful intruders into and usurpers of the office, functions and franchise of branch pilots; and the state, through its attorney-general, has instituted proceedings in the nature of *quo warranto* to try their claim to office or function; that the defendants, branch pilots (as they have the right to do under section 2707 of the State Revised Statutes), have associated themselves together

as a voluntary association, and claim that Geo. Falconi has bound himself by lawful agreement to pilot for and with his associates, and the association are litigating with him in the courts to compel specific performance; and whether this contract, as Flinn declares it to be, is void as against good morals.

Not one of these suits has impleaded the complainant. No writ or summons has been directed to or called Flinn into court. He fights the battles of strangers.

It seems to have been the belief of the solicitors who drew the bill, and the judge who pronounced this bill sufficient, that it is within the power, if not the duty, of a federal court sitting in equity, to seize and take away from state courts of competent jurisdiction, without any form of removal, any *issue of law*, and drag such issue into equity, either for trial or to determine whether the parties to such issues are entitled to any trial; and to accomplish this feat, at or on the prayer of one, not one of the contestants or parties in the suit or contention, but at the instance and solicitation of an alien or non-resident stranger to the litigation. Black, Follett, Cox, Falconi and Sheldon do not complain of their treatment in the State courts entertaining the suits against them. A Pensacola stranger, however, does complain for them.

The allegation that "*the South Pass or channel is and has been since the beginning of the construction of the jetties under the control of the Secretary of War*," is either an absolute averment of law, not fact, or, if not strictly an averment of law, is only related to and involves such facts as the law requires all courts to judicially notice.

It is not possible, in the distribution of federal and state power and dominion, that any court can set up ignorance, whether or not the Secretary of War, a cabinet officer, has invaded the territory of any State, and taken from tha state its control and dominion of over fourteen miles of the course of one of the largest rivers in the world, lying within

the borders of the state, and is holding such possession and "control" as to repeal all laws of that state relating to such portion of the former dominion of the state as lay within the territorial limits of the federal judicial district where the court is held. The averment that even congress could lodge sufficient power of legislation in the hands of the Secretary of War to enable him to adopt any "rules and regulations," repealing the pilot laws of any state, by the terms and effect of his rules and regulations, is too absurd to merit remark.

It would seem that no proposition can be more easily comprehended, even by the most indifferent lawyer, than the absolute want of power in congress itself to effect, by legislation, a repeal of the pilot laws of any single state, without repealing, at the same moment and by the same act, all compulsory pilot laws of all of the states having seaports.

The only power to regulate navigation and pilotage within the limits of any state, vested in congress, is by section 8, article 1, of the federal constitution, granting power to congress "*to regulate commerce with foreign nations, and among the several States, and with the Indian tribes.*"

Assuming that the statutory regulations of local port pilotage and fixing the rate to be paid for pilot service is a "regulation of commerce," section 9 of the same article contains an unambiguous restriction on that power, made in the interest of the states: "*No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another.*"

Any act of congress which, in terms, repealed the compulsory pilot laws governing the port of New Orleans, and making that port free of all compulsory pilot service and dues, if confined to that port alone, and which did not, in the same act, *to the same extent*, repeal all compulsory pilot laws and dues *in all of the ports of all of the States*, would be absolutely null. It is absurd to claim that congress can confer power upon any Secretary of War to "regulate commerce" by regulations of his own manufacture, which would be null and void

if incorporated in an act of congress relating to South Pass alone.

Congress never attempted to either act for itself in the repeal of any pilot law of Louisiana, bearing on the South Pass, nor did it even attempt to confer any such power on any Secretary of War.

The following is the text of the act of June 1st, 1874, (Statutes at Large, 50):

"That from and after the passage of this act the Secretary of War is directed to assume full control *over the particular channel* at the mouth of the Mississippi river, *in course of excavation or improvement by the government of the United States, so far as may be necessary to the carrying on and protection of such excavation and improvements, and until the same shall be completed;* and he may establish such regulations respecting the *use of or passage* through such channel as he may deem needful to *fully protect the channel*, and to *facilitate* the excavation, improvement and *use thereof*. Such regulations shall be promulgated by publication thereof for ten days consecutively, in two daily papers, published in New Orleans, Louisiana, and the same may, in like manner, be changed from time to time, and any person interfering with, or obstructing, or attempting to obstruct the said improvements, and any person who shall wilfully or negligently strand or sink any boat or craft in said channel, or cause any impairment, injury, filling up or shoaling therein, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars, or imprisonment not exceeding six months, or both, at the discretion of the court."

At the date of the adoption of this act no "work of improvment" or "excavation" of any character was being constructed or made by the general government, at or in the South Pass, nor were any contemplated. South Pass was a shallow, insignificant bayou, with only about eight feet of water on the bar, inaccessible to any but the smallest coasting crafts. As shown by the appropriations for of the war department the government, under the direction for the Secretary of War, attempted to deepen the channel, both at the bar of the Southwest Pass and Pass L' Outre, by dredging with powerful dredge boats, owned

and operated by the government. Millions were expended in a fruitless attempt to secure a permanent deepening of the channel by excavation. It was to protect this operation of excavation that the war department appealed to congress for, and, obtained this act of 1874. Congress refused to give control, unlimited either in character or time, but expressly limited this qualified control, in extent to only such control *as may be necessary* to effect the purpose of *protection* and in time *until the same* (the excavation) shall be completed.

The preceeding limitations are not the only limitations in the act. The act was made with particular limitation as to the *locale* of its operation. It was to operate and be in force only over "*the particular channel, at the mouth of the Mississippi river, in course of excavation or improvement by the government of the United States.*" No possible power was conferred or intended to be conferred on the Secretary of War, to regulate or control any "particular channel," at that time untouched, and where initial excavations had not been commenced, or where the initial excavation was, subsequent to the adoption of the act.

The best test of the range of this act is found in the penal clause. The penalty demanded is not for a breach of the rules and regulations promulgated by the Secretary of War. To have so framed the act would have conferred upon the Secretary of War the power to legislate into existence a federal penal code without consulting congress. The penalty is denounced by congress itself, and limited to acts of wilful obstruction or impediment of the works, improvements and channel.

It is clear that any indictment of an offender under this statute would be fatally defective if it did not aver, in appropriate language, that the channel impaired, obstructed, shoaled, or in which the vessel or craft was wilfully stranded, was a channel "which at and prior to the 1st day of June, 1874, was then and there being excavated and improved, or in course of excavation and improvement by the government of the United

States." Any conviction on an indictment not containing this averment in some form would certainly be worthless and void.

It seems incredible that there should have been any doubt concerning the true construction and intent of this act. There was none in the Senate where the bill originated. The history of the act, is given on pages 77-831, 862-865, 1215-1219 (Senate); 4220-4599 (House), Congressional Record 43d congress, 1st session, December 4th, 1873, to June 23, 1874. The bill was fully discussed, and all the limitations contained in the act as adopted, were added by amendment in the Senate.

The improvement of South Pass was not by the general government, but by "*Eads and his associates*," *at their own risk and expense, and* was not even authorized on June 1st, 1874. The act authorizing the Eads contract was not approved until March 3rd, 1875, eight months after the act of June 1st, 1874. Until that time it cannot be claimed that any improvement of any kind was going on in South Pass. The fact is, Eads did not commence his jetty works until long after the act of March 3d, 1875, had been approved.

The act of June 1, 1874, as reported from the senate committe on commerce, authorized the Secretary of War to take full possession of the *particular channel then being improved*, and to make rules and regulations, to be published, and made a penalty of fine and imprisonment *for any breach of the rules*. Congressional Record, 43d Congress, first session, 862.

It was conceded in the Senate that the bill in that form was unconstitutional, as it gave the power of legislation to the Secretary of War; and the bill was sent back to the committee for that reason, after an interesting discussion.

The bill was again reported back, with all that portion of the bill which provided punishment for disobedience of rules of the Secretary of War omitted, and in its present form, with the exception that there was no limit to the duration of the control of the war department, and the form of the penal clause was different. On motion of Senator Sherman, the bill

as reported was amended, so as to limit the control to the completion of the excavation.

The bill as reported provided that any one who should "*interfere with or obstruct the improvements*" should be punished. This was stricken out, and the penal clause as it now stands was substituted, on motion of Senator Boutwell.

It was objected to the bill that it gave the Secretary of War control of all of the mouth of the river, but was believed to relate only to the Southwest Pass by the committee and West, who presented the bill in the first instance.

The bill was amended and recommitted, to eliminate from it all power in the Secretary of War to pass regulations which he could enforce, *either by himself* or *through the courts*; and the rules were left to be of no import, except as the breach of them might show criminal intent under the penal clause of the bill This left the Secretary of War no effective legislative power. If it had given him the power to make or repeal laws the act would have been void, as unconstitutional. This was conceded in the senate.

In order to find any gleam of equity in the bill the circuit court was compelled to hold that an act which refused power to the secretary to make *any rule*, the breach whereof could be punished either by him or by any court upon his complaint, has given him power to rob a state of its territorial jurisdiction, and repeal its code of laws by titles, an entire chapter at a blow, or with a stroke of his pen.

The jetty or Eads' act of March 3, 1875 (18 Stat. 463) confers no power on the Secretary of War to "control" the South Pass. His duty is confined to *inspection* of the work performed by Eads, for the sole purpose of determining and reporting performance or non-performance of the contract, for the purpose of determining whether Eads has earned any money or installment under his contract. This statute giving the contract to Eads *ex industria*, prohibits *any interference* with Eads by the Secretary of War and all other officers.

Section 4 of the act (18 Stat. 463) *authorizes* James B. Eads, and such persons as he may associate with himself, to construct jetties and permanent works "between the South Pass of the Mississippi river and the gulf of Mexico," on the terms and conditions and for the contingent remuneration named in the statute at their own risk of failure; *"provided, that no such structures or means employed shall hinder, delay or materially interfere with the free navigation of said pass."* The only power given to the Secretary of War is to see that the contract is so performed as to entitle Eads to payment and to draw warrants for sums due. *"The said Eads shall be untramelled in the exercise of his judgment and skill in the location, design and construction of said jetties on auxiliary works."*

The Secretary of War is to detail an engineer officer for inspection and report of depth of water obtained together with width of channel, with such other information as the Secretary of War may direct.

The only "regulation" which the Secretary of War is authorized to make are the regulations mentioned in the following clauses of the statute:

"That the said Eads and his associates shall have the right under such regulations as the Secretary of War shall prescribe, to use any materials on the public lands of the United States that shall be suitable for and may be needed in the construction of said works."

He is to report to congress the manner in which the contract is being performed, whether the works are permanent or substantial, how the channel is being maintained. In the event he shall be of opinion that the contractors are not performing the work according to the spirit of the contract, he is to report that fact to the President, who is to appoint a commission to examine and report on the matter. If the report is against the contractors, the report must be laid before congress as early as possible, and all payments stopped until congress otherwise orders.

The Secretary of War, in all his supposed regulations (ante, page 12), *has never attempted to repeal a law of the state* or rob it of a mile of its territory. It is true that he was made to exhibit himself in a most ridiculous light when he undertook to make any rules for the conduct of vessels in the *South Pass*, when congress in the jetty act had declared that there should be *no interference with* either Eads or the navigation of the South Pass, and when his interference with the South Pass might interfere injuriously to the United States in its contract with Eads, in a case where he had no more power to "regulate" than he has right to control and regulate commerce and navigation in the British Channel.

In all of the bull issued by him he has not been made to say, utter, proclaim or print a word of repeal of a pilot law, nor has he pretended to be in possession of the South Pass for any purpose. No court can draw any inference of repeal of pilot laws, either from his Mexican-like proclamation or from the act under which he pretends to act.

If, for purpose of argument, it is conceded that the secretary is viceroy, and holds dominion over a portion of the territory of Louisiana to the exclusion of the sovereignty and domonion of the state, the boundaries and extent of that territorial dominion cannot be more extensive or expanded than the limit given by the secretary himself, who has marked out the boundaries of his empire. In his rules he is careful to define the exact extent of territory affected by his regulations, confining their operation to the South Pass. In his first "regulation" he declares:

"The South Pass is considered as embracing the entire extent of channel between the upper end of the works at the head of the pass, and the outer or sea end of the jetties, at the entrance from the gulf of Mexico."

This only embraces twelve miles of the course of the river and a fraction of the pilotage ground, as defined in the state statutes. There is pilotage ground south and seaward from the

sea end of the jetty walls, in a circle having a radiaus of five nautical miles. (La. Revised Statutes, section 2694.)

Over so much of the pilot ground as is outside and beyond the sea end of the jetties the Secretary of War has never attempted any "regulation;" and until Wilson vs. McNamee, 12 Otto 572, is reversed state control is yet undisturbed and unquestioned over this seaward portion of pilotage ground All of the disabilities and penalties attaching to unlawful and unlicensed piloting would at once attach to any person unlawfully acting as port pilot, if he attempted to pilot any vessel within this radius of five miles, over some portion of which all vessels must pass in charge of a pilot, whether inward or outward bound.

The bill has not a suspiciou or shadow of equity, and should have been dismissed on the motion for injunction *pendente lite*.

The questions insolved in this case have been passed on by the Supreme Court of the state in the case of *the State of Louisiana ex rel. Richard J. Williams vs. A. E. Livaudais, Judge of the 24th. Judicial District Court*, reported in 35 La. An. —, where all of the matters set up in the bill in this cause were urged in the Supreme Court of the state in a proceeding to prohibit the *oyer and terminer* court of the parish of Plaquemines from proceeding with prosecutions for illegal piloting. The court refused to prohibit, and declared that there had been no overthrow of the state pilotage laws by the Secretary of War or congress, and no intention on the part of either to impair the full force of state laws.

The bill should have been dismissed on the evidence and proofs; it appearing by the evidence submitted by complainant that neither the complainant or any other pretended owner of the Mary Lee had any interest in the navigation of the Mary Lee as a pilot boat.

Geo. A. Sheldon, in his deposition (record, page 280), testifies that *no one but himself* had any interest in the navigation and

use of the Mary Lee as a pilot boat. On page 283 *et seq.* he gives the full details of a charter of the ship to him by written charter party, with full possession and control in the charterer. "Exhibit A," annexed to his deposition, is a copy of written charter party of the vessel (record, page 287), of the date October 14, 1880. [The bill was not filed until January 28, 1881]. The charter party is three months older than the suit. By the terms of the charter party Sheldon was given entire control and possession of the vessel, and was to pay two thousand dollars per month.

In his deposition, page 285, he swears that Black, the controlling owner of the Mary Lee, knew all about this charter and received the sum stipulated as price of charter.

The pretended complainant, Flinn, with the charter party out, had no legal interest in the question whether the Mary Lee, and the gang employed on her by Sheldon, *the charterer*, were disturbed in piloting. Sheldon, the charterer of the vessel, alone could complain.

The truth of this deposition cannot be questioned by complainant, and proves the Florida man, Flinn, out of interest and out of court. This was urged in the circuit court, but no heed taken of this extraordinary contradiction of the averments of Flinn's bill.

The bill was not only shown utterly and disgracefully false, in the particular above referred to, but in the following particulars:

1st. The complainant avers that Pliny Cox is not only a part owner of the Mary Lee, but is a duly licensed branch pilot of the port of New Orleans under the state laws; that he owned a dollar in the Mary Lee is denied in the answer under oath.

The certificate of enrollment of the Mary Lee in the custom-house of New Orleans, her home port (record, page 187), shows J. W. Black, by his own oath, owner of seven-eights, and complainant, Flinn, one-eight; and no new enrollment, by reason of change of ownership, since November 3, 1877. Also see the

affidavit of J. W. Black before master, offered and taken as proof on final hearing without objection. This affidavit is in record, page 42; the offer of this affidavit on trial is in record, page 190. Black in this affidavit swears that he owned seven-eights, Flinn, one-eighth, on June 16, 1881. A fair specimen of the free swearing in this cause is Black swearing to the truth of the statement in the bill, that Black, Flinn, Cox, Follett and Falconi were the owners of the Mary Lee; and five months afterwards, on record, page 42, swearing in this affidavit that he owning, seven-eights, and Flinn, owning one-eight, are the owners of the entire vessel. There is an utter failure to show Cox an owner in the Mary Lee.

When the bill was filed it was necessary for Black to swear that Cox was part owner of a pilot boat of over fifty tons burden, exclusively used as a pilot boat. He met the occasion and swore to the bill, with this false statement, as a definitive and material averment.

There is no more truth in the averment that Pliny Cox was then or is now a duly licensed branch pilot, *licensed under and according to the laws of the State of Louisiana.* Black knew this to be false when he swore to the bill.

On November 24, 1880, the attorney-general of the State filed an information, in the nature of *quo warranto*, against this Pliny Cox, in the Civil District court for the parish of Orleans. No. 1367 of the docket, averring that Cox unlawfully usurped and intruded into the office of and pretended to be a branch pilot of the port of New Orleans, and prayed judgment of *ouster* against him, with perpetual injunction.

The entire record of this court, by transcript, was in evidence before the circuit court, and is here (record, page 137, *et seq*.) This *quo warranto* was tried, and resulted in a judgment of *ouster* and a perpetual injunction against Cox, prohibiting him from piloting or acting as a pilot. This judgment is *in extenso* on record, page 147. So much for the claim that Cox was or is a lawful pilot.

The bill is equally false in respect of the pretended co-owner and pilot, *Hiram Follett.* The attorney-general, on the same date with proceedings against Cox, instituted like proceedings, with like averments, against Follett. A copy of this record is here (record, page 123, *et seq.*) This proceeding resulted in the same decree as in the case, of Cox *ouster* and injunction against further piloting. This decree is *in extenso* in the record, page 136. So much for the pretense that Follett was a lawful State branch pilot.

The case of the alleged pilot, Falconi, as set out in the bill, has no greater element of truth in it. The averment that he was a part owner of the Mary Lee is refuted by his own deposition under oath.

On page 69 of the record, in answer to the question whether or not he had ever acted as pilot on the Mary Lee, said: "I went on board on the evening of the 16th of January last" (1881). Q. How long did you stay on board of her? A. I think I stayed on her until I was enjoined, and left her on the 25th of January, in the evening.

The bill was filed on the 28th of January, three days after Falconi had left the boat as pilot, never to return, as he states in his deposition. He left the Mary Lee because he was enjoined at the suit of forty-nine other branch pilots, with whom he had contract relations. The entire record of this proceeding in the state court is in the printed record under the title, Richard Francis et al. vs. Geo. A. Falconi. Record, page 169, *et seq.* A preliminary injunction was granted on the 22d of January, 1881, six days before this bill was filed. The text of this writ, is in the record, page 181, and enjoined him from attempting any combination with the owners of the Mary Lee, represented by Black, and from piloting any vessel in breach of his contract with the plaintiffs in that action and defendants in this suit. On March 9th, by final decree, this injunction was made perpetual Record, page 186. As Falconi states in his deposition he was

bound to keep off the Mary Lee and away from Black by the command and final decree of a competent court. This record was before the circuit court at the hearing. The decree, unreversed and unappealed, was in all respects unheeded by the court to the same extent as were the final decrees against Cox and Follett.

The only other person named in the bill as having any right to pilot is the man who, on hearing, proved himself to be the *charterer* of the Mary Lee, Geo. A. Sheldon, and who is averred to be "*duly licensed and commissioned under and according* to the laws of the United States." If this averment is to be taken to mean that Sheldon is licensed as a pilot under the navigation laws of the United States, he is shown to have no shadow of right to act as a pilot to any other than an American vessel, owned in whole or in part by citizens of the United States, and propelled in whole or in part by steam, and to which he was attached as a part of the crew or equipment No right to act as a local port or branch pilot can be inferred from the bill.

Sheldon exhibited no license of any kind, but in his deposition (record 276) swears that he held his fourteenth annual license from the inspectors under the federal navigation laws, which, he says, reads, "from Donaldsonville to the gulf."

It was settled in *Steamship Co. vs. Joliffe, 2 Wall. 450*, that a license of this character gives the licensee no character or standing as a pilot, except *while he is attached to an American steamship as a part of her equipment*, when he becomes the pilot of *that ship alone*, and at no time *a local port pilot*.

Flinn, the complainant, is, by his own averment, an inhabitant of *Pensacola*, in Florida, and certainly cannot claim or assert any personal right or franchise to pilot at a port where, according to the evidence, he has not been seen or been physically present for years past, in a State of which he is not even an inhabitant.

The bill, when filed, was a tissue of falsehood from its beginning to the prayer, and so demonstrated by the proof, even if

record proof and the depositions of the complainant's witnesses are alone considered.

If it is claimed that the bill will lie, with all of the above stated proof against it, with Flinn, Falconi, Sheldon, Cox and Follett, shown to be without right to engage in piloting, because the bill avers, as a matter of allegation, that Flinn has a right to employ the Mary Lee as a pilot boat, the answer is obvious:

1st. None but pilots can own or operate a pilot boat at the mouth of the Mississippi river. Without lawful pilots and owners, the Mary Lee never could be a lawful pilot boat. No pilot has title to a plank or spike in the craft.

If the Mary Lee had been owned by lawful pilots she could not have been navigated in the manner shown in the proofs.

Section 2701, La. R. S., commands all vessels used as pilot boats to be decked, not less than fifty tons burden, and that such vessel be *exclusively employed as a pilot boat.* The scheme of Black, the seven-eight owner of the Mary Lee, who is the real complainant and manager of the Mary Lee, was a rascally plan to use the Mary Lee as a towboat. and rob the lawful pilots aa source of unlawful profit The Mary Lee never was used exclusively as a pilot boat.

Sheldon in his deposition, record, page 278, was questioned relative to the use made of the Mary Lee. Q. *What was the boat engaged in at that time? A. Piloting, sir. Q. Did she do ang towing? A. Yes, sir, towed also.* Q. You would tow when you got a *chance, and pilot when you got a chance? Q. We would tow or else pilot. Q. You towed vessels for hire during the time?* A. Yes, sir.

Under the law if a state branch pilot had so illegally used a pilot boat for both towing and piloting, under the provisions of section 2702, State Revised Statutes, it would have been the duty of the governor to revoke his license.

It never was believed an honest use of equity or equity

courts to aid in the breach of express statute or criminal law at least until this decree was made.

Whether "*the South Pass or channel is and has been since the beginning of the construction of the jetties under the control of the Secretary of War*," and whether "*said pass is subject to no other rules, regulations or laws, than such as have been passed by congress and those declared by the secretary of war of the United States*" (bill page 1), are doubtless questions of law to be solved by the court, by an interpretation of federal legislation and facts, of which the court must take judicial cognizance, and will be dealt with later as a question of law. Yet believing, as the solicitors of complainant seem to have done, that these questions were to be solved by proof and deposition, it is curious to see how signally they failed to prove that the Secretary of War had, either by intention or in fact, had any such possession. In all of the "regulations" given in proof the secretary does, not by word or act, either take possession of South Pass or attempt to crush out of existence a single state statute. (See record page 296 *et seq.*)

Captain Huer of the engineers, an extremely willing witness for complainants (record, page 265), testifies: *Q. Who is doing the work down there? A. Captain James B. Eads and his associates. Q. Under whose supervision? A. Well, under his own. Q. Are you not the supervisor? A. No, sir. Q. You are simply the inspector of the work? A. That is all. Q. You have no orders to give to Captain Eads? A. None at all.*

Again, on cross-examination (record page 367).

Q. Captain, will you state now the full measure of the duty to which you are commissioned by the war department at the mouth of the Mississippi river? A To report the depth of water at South Pass and any improvement that may occur there. Q. Am I not correct in stating that every improvement in the way of wing dams, artificial work or jetty, in the South Pass, is placed there at the instance, direction and is under the control of Eads and his

associates? *A. It is.* And so on to the end of his deposition.

A queer possession is the possession of the Secretary of War, as shown by the proofs.

By the statement of account of the robbery of the branch pilots, shown in the pretended account of Sheldon (record, page 289 *et seq.*), it appears that between Nov. 1 and Nov. 24, 1880, the robbery of pilot dues was $2,423.38; between Dec 1st and 30th it was $3,523.39; between January 1st and 29th, 1881, $2,801.77—or $9,614.77 in three months, as shown by his untruthful figures. From this some estimate can be formed of the extent of injury inflicted upon the defendants by the action and ruling of the circuit court. This case is a fair illustration of how impotent this court is, by the slow process of review, to redress the injuries inflicted upon litigants by the blunders or errors of the circuit courts. Not one dollar. of this money can ever be recovered of the insolvent complain. ant or his *protegés*

By uncontradicted judicial records and by the depositions of witnesses, produced and sworn in behalf of the complainant, the circuit court, at the final hearing, had demonstration that neither Black, Sheldon, Cox, Follet or Falconi, could lawfully act as port pilots on the Mary Lee, that the Mary Lee, had she been owned in whole or in part by lawful pilots, was unlawfully used in the joint character of pilot boat and towboat, in express violation of law. And, further, the pretence that the Secretary of War held even wrongful physical possession of South Pass was overthrown by the deposition of complainant's witness, Capt. Huer, of the engineer department at the South Pass, without resort to facts, geographical and political, of which it was bound to take judicial notice.

If the act of June 1, 1874, in terms or by possible implication, either repealed the pilot laws or could authorize the Secretary of War to repeal the pilotage laws of Louisiana, or in any one port, the act is void as repugnant to the constitution, in that, by

a regulation of commerce, one port is selected, and a rule of commerce and port charges made which is not common to all ports in the United States.

It is clear that congress cannot delegate to the Secretary of War any power of legislation sufficient to empower him to repeal state laws, made federal by adoption. Therefore, if there is any repeal of state law, it must be sought for in the act of congress itself.

There is no direct repeal of anything in the text of the statute. If any repeal can be claimed it must be repeal by *implication.* "A repeal by implication is not favored. The leaning of the courts is against the doctrine, if it be possible to reconcile the two acts of the legislature together."

Sedg. on Stat. and Con. Law, 127.
Canal Co. vs. Railroad Co., 1 Gill. and J. —.
Bowers vs. Lease, 5 Hill 221.
Williams vs. Potter, 2 Burb. S. C. Rep. 316.
McCool vs. Smith, 1 Black. 459.
Henderson's Tobacco, 11 Wall. 652.
United States vs. Walker, 22 How. 229.
Wood vs. United States, 16 Pet. 363.
Aldridge vs. Williams, 3 How. 23.
United States vs. Packages of Dry Goods, 17 How. 93.
Dwarris on Stat. 533.

If it be conceeded for the purpose of argument that the act of congress approved June, 1874, can be moved by the flank twenty miles and laid on South Pass, there is nothing in the act inconsistent with the existence of port pilotage laws of the state, even if it be assumed that the Secretary of War is given power to *regulate* the movements and conduct of the pilots. It would be a strange protection to any channel to destroy all laws passed to ensure skillful and experienced pilots for the guidance of vessels through the channel, and throw the channel open for vessels to pass through without pilots, or enable them to employ any tramp uncontrolled by law and not com-

pelled to submit to examination as to his experience and fitness for the task. There is nothing in the act inconsistent with lawfully established pilot service—certainly nothing which can be construed as an intention by congress to pass an unconstitutional, act repealing compulsory pilotage at the port of New Orleans, and leave compulsory pilotage in all other ports of the United States.

If the construction placed on the act of 1874 by the district judge is the correct construction of the text of the act, nothing can be more certain and plain than the unconstitutionality of the entire act. It is in that case null and void, and should have been disregarded.

We respectfully submit that the action of the circuit court in this case, when viewed either in respect of its utter disregard of the relation of the federal and state governments, and the respective power and authority of each autonomy, so often mapped out and defined by this court, or in respect of the wrongs inflicted upon the defendants, diverting from them thousands of dues consigned to them by law, and vesting them in lawless, irresponsible, insolvent law-breakers, beyond any possible hope or recovery, by the ill-considered decree in this cause, will stand a remarkable illustration of the propriety of the enumeration with other sources of property laid down in the civil law, "by virtue of the thing adjudged"—that is, by reason of the legal but unjust translation of title growing out of erroneous judgments and decrees of courts, by which the true owner of property is divested of his title and that title conferred, unjustly in fact, but legally in form, upon a stranger, by the blunders and errors of courts.

We respectfully submit that the decree appealed from if erroneous both in law and in all of the conclusions of fact upon which it is claimed to be based.

Respectfully submitted,

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Counsel for Appellants.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 242.

RICHARD FRANCIS, ET ALS., APPELLANTS,

versus

JAMES M. FLINN, APPELLEE.

Appeal from the Circuit Court of the United States, for the Eastern District of Louisiana.

Brief for Appellee.

JOSEPH P. HORNOR,
Of Counsel.

New Orleans, 25th March, 1886.

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I.

The Mississippi river, after flowing by the City of New Orleans for nearly a hundred miles, when within ten or twelve miles of the sea, divides itself into several branches, which spread out in different directions, making of the whole a fan-shaped form, which is known to geographers as the Delta. The various branches all divide at the same spot, are called "passes," and the place of their division is known as "the head of the passes." Until within a comparatively few years past, that known as the "South West Pass," running in the direction indicated by its name, was the one

generally used by commerce seeking the port of New Orleans, and had rarely, if ever, sufficient water on the bar at its mouth to allow the entrance of vessels drawing eighteen feet of water, notwithstanding the fact that the government of the United States spent large sums of money, at frequent intervals, in dredging.

Prior to the time when that Pass came into general use, the pass called "Pass a l'Outre," which ran in almost a directly opposite direction, namely, towards the south-east, was sometimes used, but was never navigable, we believe, for vessels drawing more than fifteen feet of water.

In 1875, Congress passed an act contracting with the celebrated engineer, Captain J. B. Eads, to open one of the passes of the Mississippi river to commerce, by means of jetties and a system of dams, etc., and, until the final passage of the law it was supposed that the works contemplated by the contract would be constructed either in South West Pass or in Pass a l'Outre, those passes having the deepest water, and having natural advantages arising from that fact, which would make the work the more easily to be performed, and render success more probable, the contract calling for a practical channel thirty feet in depth. But the National Legislature selected, and insisted upon, to the great surprise of all interested in the completion of the work, the pass known as the "South Pass," which is the one which comes the nearest of all the passes to flowing in a straight line from the "head of the passes" following

the previous course taken by the river before reaching that point.

At that time the South Pass was probably the least used of all the passes; it had but eight feet of water on the bar at its mouth, and was navigated only, if at all, by small craft, such as oyster-luggers and fishing boats, its mouth was some twenty miles distant from the pilot-station, and town where the pilots lived, which was situated at the mouth of South West Pass, and for its whole length South Pass runs through a barren sea-marsh uninhabited by any of the human race. The difficulties therefore to be surmounted by the enterprising engineer who undertook that prodigious task, were exaggerated as much as possible, and therefore, the perfect success of his labors, are as much more proportionately entitled to our admiration and gratitude.

Commencing his works at the sea-end of the South Pass, after they had made a certain progress, Capt. Eads discovered that, while he might make a perfect success with his jetties there and attain the required depth of thirty feet of water, there were shoals and shallows higher up in the pass which would as effectually prevent the passage of heavily laden vessels as if the obstructions at the bar were not removed at all; and he also found that in order to obtain a sufficiently powerful current in the pass to do the scouring out work, he would be compelled to erect works at the "head of the passes" to deflect more water into the South Pass than naturally ran through it; he therefore constructed dams and wing dams and other works from the "head of the

passes" all through the entire length of the South Pass, about twelve miles, which were completed some time before the commencement of this suit, 28th January, 1881, (Record p. 1,) and the effect of which was to make the South Pass, in comparison with its original condition, an entirely artificial piece of work, being really a *canal* constructed by the government of the United States for the benefit of the commerce of all nations. At that time, that pass was a perfectly and easily navigable artificial channel, with a uniform depth of over twenty-six feet of water through its entire length and a depth of thirty feet of water at its mouth, where there had formerly been a bar of only eight feet in depth, and which bar had been entirely removed and had ceased to exist; and the whole pass was a canal navigable for vessels drawing twenty-five feet of water, sufficient to admit the largest steamships to trade backwards and forwards from New Orleans to the sea with the greatest ease and safety.

See the testimony of Captain Wm. H. Heuer, of the U. S. Engineer Corps, the government inspector of the works of Captain Eads, at pages 265 *et seq.*, of the record, which is fully corroborated by the testimony of G. W. Adams, an employee of Captain Eads, at pages 242 *et seq.;* of Wm. H. Lippert, a master-mariner, at pages 253 *et seq.;* of Simon R. Ulmer, another master-mariner, at pages 256 *et seq.;* of John Connor, a river pilot, at pages 259 *et seq.;* of George A. Sheldon, a master of a tug-boat, at pages 275 *et seq.;* and others in the record.

This being the existing state of facts at the time of the institution of this suit, the principal question to be determined herein, is whether this pass or canal, thus constructed under the auspices, and at the expense of the government of the United States, for the benefit of the commerce of the world, was, and is to be free for the navigation incident to that commerce, or whether that navigation is to be hindered and impeded, and taxed for the benefit of a few individuals, commissioned and licensed by the State of Louisiana, under the name of Branch Pilots, who under the excuse of piloting the vessels passing through this canal, pretend to render services to them, which in reality, they do not need, all obstructions having been removed.

Prior to the commencement of the work of Captain Eads, at South Pass, no branch pilots ever pretended to pilot vessels through it, frequented it, or ever went near it. Prior to that time, the bars at the mouth of South West Pass, and Pass a l'Outre, were changeable and the channels were shifting; risings from the bottom known as mud-lumps were of frequent occurrence, and never could be accounted for, and the navigation of these Passes was difficult and perhaps dangerous, and there is no doubt that the services of the branch pilots were then necessary and indispensable, as they probably are still at those points; but that their services are entirely useless in the canal at South Pass, and at its entrance and exit, is indisputably established by the testimony of the witnesses to which we have already referred.

II.

It is contended by our opponents that the laws of the State of Louisiana, known as the Pilot Laws, have been adopted by the Congress of the United States, in its general regulations relative to pilots, and are really Federal Laws, and we may, for the purpose of this argument, readily admit that proposition, with the proviso contained in the Act of Congress that they are only to be so regarded until Congress *shall otherwise provide*, and we hold that Congress has otherwise provided in the case of the South Pass Canal, generally by the law authorizing its construction, and specially by the Act of Congress, approved June 1st, 1874, entitled "An Act to facilitate the execution of and to protect certain public works of improvement at the mouth of the Mississippi river," (18 Statutes at Large, p. 50.)

By this Act it is provided: "That from and after the passage of this act the Secretary of War is directed to assume full control over the particular channel at the mouth of the Mississippi river, in course of excavation or improvement by the government of the United States, so far as may be necessary to the carrying on and protection of such excavation and improvements, and until the same shall be completed, and he may establish such regulations respecting the use of or passage through such channels as he may deem needful to fully protect the channel, and to facilitate the excavation, improvement and use thereof. Such regulations shall be promulgated by publication thereof for ten

days consecutively in two daily papers published in New Orleans, Louisiana, and the same may in like manner be changed from time to time, and any person interfering with or obstructing or attempting to obstruct the said improvements, and any person who shall wilfully or negligently strand or sink any boat or craft in said channel, or cause any impairment, injury, filling or shoaling therein shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars, or imprisonment not exceeding six months, or both, at the discretion of the Court."

And under this act, and the act contracting with Capt. Eads, (18 Statutes at Large, p. 463,) we contend and allege in our bill, that "the government of the United States has caused to be removed the obstructions in said channel, known as the Bar, and that said Pass is subject to no other rules, regulations, or laws than such as have been passed by Congress and those declared by the Secretary of War of the United States, in pursuance of the authority vested in him by the Acts of Congress aforesaid, and such laws as Congress may hereafter make relative to said channel."—See Record, p. 1.

Now we have shown by the testimony of the United States Engineer Officer in charge of the jetties, Capt. Wm. H. Heuer, detailed for that purpose, and by others already referred to, that from the very commencement of the works, they have been in charge of the Secretary of War, and as early as December 9th, 1874, we

find a set of regulations established by a bureau of the War Department, the Office of the Chief of Engineers, U. S. Army, for the navigation of the South Pass, under and in conformity to the provisions of the act of June 1st, 1874, above referred to.—See Record, p. 295.

Among these regulations of December, 1874, only the first is copied in Record, (p. 295,) and it throws much light on this controversy. At that time the works could not have made very much progress, and navigation consequently not much improved, for this regulation provides especiallly and emphatically that no one should attempt to pass a vessel through the channel that the government of the United States is maintaining, improving or attempting to improve without having on board of said vessel a *branch pilot* licensed to pilot vessels across the bars of the mouth of the Mississippi river, as provided for by the Statutes of the State of Louisiana.

That the War Department could make such a regulation and requirement under the act of June 1st, 1874, cannot be doubted, and this conceded, the authority of that Department to repeal or rescind that regulation is quite as evident, and by an order from the same bureau of the War Department that regulation and requirement was specially rescinded under date of July 10th, 1881, (Record, p. 295); and on 5th September, 1881, an entirely new set of regulations was issued from the War Department by the Secretary of War, in which no requirement is made that any vessel shall employ a "*branch pilot*," (Record, pp. 296 et seq.) and on

14th December, 1881, another set of regulations was issued by the same authority, equally lacking in any such requirement.

Why was the regulation of 1874 requiring the employment of branch pilots rescinded? and why was any such requirement omitted from the subsequent regulations promulgated by the Secretary of War?

Because there was no further use of branch pilots in this canal or channel that had thus been dug by the government; no guide was necessary to follow in so straight and plain a path; as well might it have been to require a branch pilot in a fathomless sea, as in this highway of commerce from which all bars and obstructions had been removed.

That we are correct in these assertions is proved by all the testimony that we have heretofore stated, but we prefer to quote particularly in this place, the reasons given by the U. S. Engineer in charge, Capt. Heuer, as to why the regulations requiring branch pilots in the canal, at first, were rescinded, and why their employment was not required when the new regulations were promulgated. On cross-examination Capt. Heuer was asked this question:

"What I want to get at is, in redrafting the rules, what influence was at work to drop that provision requiring branch pilots to have charge of vessels drawing over twelve feet of water?"

To which Capt. Heuer replied:—

"That I will try to give you. Less than a year ago, a communication was addressed to the Secretary

of War, enclosing United States licenses to three pilots, authorizing them to pilot vessels down the Mississippi river to sea; they were not regularly licensed branch pilots; this communication requested that the Secretary endorse these licenses, giving to the holders of those papers permission or authority to pilot vessels through the jetties. As the law of Louisiana required all vessels using this channel, at the mouth of the river to carry a branch pilot, I asked the Secretary not to authorize the pilots in question, to pilot vessels through, but that, in my judgment, the pass was perfectly safe for any one knowing the channel to take a vessel through. In consequence so much of the regulations as required vessels to carry a pilot, was repealed or changed."—Record, p. 273.

The testimony we have already quoted shows that such a state of affairs exist in this channel as to render any requirement by any law, State or national, requiring vessels to take branch pilots, to be perfectly ridiculous. The bar has been removed, the channel has been sounded in every direction and maps made and put at the free disposition of anyone requiring them, which enables anyone capable of navigating a vessel to obtain easy access and egress without any aid whatever; it is shown that steam vessels need no other pilots than those they are required by the steam navigation acts to have; sailing vessels are brought in by tugboats and only have to follow the tug, while the pilot remains on board doing nothing, and that the practice has become prevalent for the branch pilot to board a vessel

just before she leaves the end of the jetties or just before she reaches it from sea, and remaining on her only until she is past that point where there is thirty feet of water, a very few minutes in all, hardly enough, in fact, to obtain his certificate of service.

This should decide this case; but we are met in this argument by the plea that at the time of the passage of the statute of June 1st, 1874, there were, as yet, no works at the South Pass, that the contract with Eads was not adopted until the following March; that the statute of June 1st, 1874, applied only to the work then going on at Southwest Pass, twenty miles distant, and that the lower court had moved that law that distance "by the flank" to make it apply to this case.

In reply to all which, we say that the act in question plainly authorized the Secretary of War to take charge of any channel that was in course of excavation or improvement by the United States at the mouth of the Mississippi river; that the excavation by Eads of a channel under a contract with the government of the United States was an excavation by the United States; that such was the interpretation of the Executive Branch of the Government of the United States is shown by the proclamation of regulations by the Secretary of War, to which we have referred, in which that officer expressly bases his power to frame such upon said act of June 1st, 1874, and under which regulations said great achievment of engineering skill has been successfully accomplished, and we are slow to believe that this Court will go so far as to say that that interpreta-

tion of the Secretary of War was incorrect, and that the government never had any authority there while that stupendous work was going on.

The section 4235 of the Revised Statutes, relied on by our adversary, adopted in 1789, while continuing the State laws as to pilots, limits itself in its opening sentence "until further provision is made by Congress;" we have shown that for this channel that "further provision" has been made by Congress, and, consequently, as to it all State laws are repealed and abolished, and so they should be, for here they certainly are of no more use. But we shall proceed to briefly review the various assignments of errors that have been made by the appellants.

III.

First. There is no lack of proper parties to the bill, because complainant sues for himself alone; he prays protection in his own rights as part owner of an American vessel, for leave to use her and be protected in her use under our laws, and he has a right to maintain this action for his own rights, without any relation to those of his co-owners, for whose account he asks for no relief.

Second. It is not true that all the material allegations of fact in the bill are overthrown and negatived by the answer and proofs in the record.

Third. It is respectfully submitted, in the argument we have already made, that the lower court did not err in declaring in the final decree that " Chapter 201,

first session of the Forty-third Congress of the United States, entitled an Act to facilitate the execution of and to protect certain public works of improvement at the mouth of the Mississippi river, approved June 1st, 1874, has superceded the law of the State of Louisiana relating to pilots, so far as the works known as the Eads jetties are concerned," and in decreeing that the Eads jetties are constructed by the United States—p. 340.

Fourth. Complainant was clearly entitled to the injunction asked and granted.

Fifth.—The lower court did not decree that the complainant, James M. Flinn, had a right to pursue the business of "*branch pilot*," through the South Pass of the Mississippi river, as asserted in the fifth assignment of errors, but enjoined the appellants from interfering with him, or his agents, in their business of "pitoting," and recognized complainant's right to use his steamer as a pilot-boat in the channel in the South Pass of the Mississippi river, a right under the decree, inherent in any vessel owner as well as in complainant, and a right which the court simply decides cannot, in that channel, be monopolized by the appellants, as branch pilots under State law.

Sixth.—There is no error in the final decree.

IV.

Let us examine the record to see why the appellants were so anxious that we should make other parties to the bill, besides the ordinary ground that by our making such parties, we should oust the Court of jurisdiction.

At or immediately before the time of our filing the bill in this case, George A Falconi was a branch pilot, under the State laws, but was running in connection with the steamer Mary Lee, which was used by the complainant as a pilot-boat; in his testimony he says he contracted to do so, received over five hundred dollars and the promise of an interest in the boat in consideration of his doing so, and that after less than ten days' work, he quit his work and went back to the appellants, who had formed an exclusive association, carrying his spoils with him, and this under a pretence that he was enjoined by the State courts. See his testimony, pp. 69 to 75, on which latter page he says that he went back to the association, which forgave him a penalty of $5000 that he had incurred, and that he had been working for the association ever since. This association is the one formed by the Branch Pilots and mentioned in our bill, which is formed by the appellants herein, and whose pretended charter will be found at pages 20 et seq. of the record.

It appears that on 22d January, 1881, these appellants instituted suit against Falconi before the Civil District Court for the parish of Orleans, to enjoin him from piloting vessels, except for the benefit of said Pilots' Association (p. 169); that a preliminary injunction was issued the same day, but was only served in the hands of Falconi's wife, in the city of New Orleans, (pp. 181, 182); that Falconi appeared on 25th January, 1881, by counsel (p. 182), and got an order dissolving the injunction on his giving bond (p. 183), from which order the plaintiffs appealed on 26th January, 1881 (p. 183), which

does not seem to have been prosecuted, because, on 9th March, 1881, Falconi signed a *confession and an agreement*, that judgment might be entered against him, making the injunction final and perpetual, which was accordingly done (p. 186), and the demurrer in this case, complaining that proper parties plaintiff had not been made by complainant's bill, because Falconi was not made such party, was only filed six days before, on 3d March, 1881.—See p. 9.

We think comment unnecessary on this state of facts.

V.

Hiram Follett was another branch pilot running in connection with complainant's boat Mary Lee, as alleged in our bill: he had been duly commissioned as such by the Governor of the State of Louisiana, and he is another man that the appellants complain we have not made a party plaintiff.

Long before the filing of our bill, on 20th Sept. 1880, Follett filed a suit in the 24th Judicial District Court of Louisiana, alleging himself to be a branch pilot, against the Pilots' Association, praying that they be enjoined for interfering with him as such (pp. 103 to 105), and obtained a preliminary injunction to that effect (p. 110), and that suit was pending when our bill was filed in this case, and was being prosecuted by Follett in good faith, but, on 28th October, 1881, he was induced to confess judgment, and agreed that he had no right to act in any manner as a branch pilot, and judgment was accordingly entered on motion of the

counsel of the Pilots' Association in that and in this suit (p. 122); compare that confession with the solemn oath he, Follett, took to the truth of the allegations of his petition for injunction, on page 106.

And also before the institution of this suit, on 24th November, 1880, a suit was instituted in the Civil District Court for the parish of Orleans, in the name of the State of Louisiana, instigated by the Pilots' Association, against Follett, alleging that he was unlawfully exercising the authority of branch-pilot, and praying for a decree to that effect (p. 123); Follett appeared by counsel and demurred or excepted to the jurisdiction of the Court (p. 125) and judgment was entered maintaining his exception and dismissing the suit (p. 127), and the State appealed to the Supreme Court of Louisiana (p. 127) and counsel for appellants here witnessed the appeal bond (p. 128). The judgment was reversed February 14th, 1881 (p. 131), *after the institution of this suit;* on 18th February, 1881, Follett pleaded to the merits, setting up his commission (pp. 128 to 130); *but* on the trial, Follett was *absent and not represented*, and judgment went against him by default on 24th February, 1881 (p. 136), although up to the time of the institution of this suit, January 28th, 1881, he had prosecuted that suit in good faith; he evidently abandoned it under some agreement with the appellants herein, because:

On the 22d October, 1880, George Osgood, one of the appellants herein, instituted suit in the Civil District for the parish of Orleans, against Hiram Follett and others, in which it was alleged that Follett was not

a branch-pilot, and an injunction was asked for restraining him from acting as such (pp. 156 to 159), and Follett strenuously defended that suit (pp. 160 to 167) until 28th February, 1881, just a month after the institution of this suit, when Follett came into that Court and stipulated and agreed that he was not a branch pilot and *confessed judgment* that the injunction prayed for might be made final and perpetual against him, which was accordingly done, the plaintiff in that suit being represented by the same counsel who appears for the appellants in the case at bar (see p. 167).

After getting this man Follett to make default in one case as we have seen, on 24th February, 1881, and getting him to confess judgment in their favor on 28th February, 1881, so as to prevent and enjoin him from running with complainants' boat, the appellants complain in this case, by their demurrer filed 3d March, 1881, that we had not made proper parties, because we had not made Follett a party plaintiff to our bill!

VI.

Pliny Cox was another branch-pilot running in connection with complainants' boat Mary Lee, as alleged in our bill; he had been duly commissioned as such by the Governor of the State of Louisiana, and he is another man that the appellants complain we have not made a party plaintiff.

Long before the filing of our bill, to-wit: on the 25th of October, 1880, Pliny Cox filed a suit in the 24th Judicial District Court of Louisiana, alleging himself to

be a branch-pilot, against the Pilots' Association through its President, George Gersdorf, praying that they be enjoined from interfering with him as such (pp. 82 to 84), and obtained a preliminary injunction to that effect, on making oath and giving bond (p. 89); and that suit was pending when our bill was filed in this case, and was being prosecuted by Pliny Cox in good faith, *but*, on 22d March, 1881, he signed a consent by which he agreed that judgment might be entered against him, with costs, that the judgment might be signed at once, and become final as a confession of judgment (p. 102), and upon which judgment was accordingly entered on motion of counsel for the appellants here, vacating the injunction that Pliny Cox had obtained (p. 103); compare that confession with the solemn oath that Pliny Cox took to the truth of the allegations of his petition for the injunction on page 84.

Also, before the institution of this suit, on 24th November, 1880, a suit was instituted in the Civil District Court for the parish of Orleans, in the name of the State of Louisiana, instigated by the Pilots' Association against Pliny Cox, alleging that he was unlawfully exercising the authority of branch pilot, and praying for a decree to that effect (p. 137); Pliny Cox appeared by counsel and demurred or excepted to the jurisdiction of the court (p. 139), and afterward answered to the merits, insisting on his rights (p. 141), and continued to defend the case in good faith until after the institution of the suit at bar, when, on the 8th February, 1881, he accepted service of a notice of trial signed by the coun-

sel who appears here for the relators (p. 144). and on the trial of the case, February 14, 1881, Pliny Cox failed to appear or be represented by his counsel, and the counsel for the appellants here appeared for the State of Louisiana and tried and submitted the case (p. 143), and judgment was entered against Pliny Cox, by default, decreeing him not to be a branch pilot, on the 3d of March, 1881, the very day that counsel for appellants filed his demurrer in this case, on the ground that said Pliny Cox ought to have been made a party plaintiff in this suit (p. 9). Pliny Cox evidently abandoned that case under some agreement with the appellants herein, because:

On the 30th November, 1880 (it is wrongfully printed 1881 in the record, p. 148, for the oath and order of injunction and citation are all dated in 1880, p. 151), Pliny Cox instituted a suit in the Civil District Court for the parish of Orleans against George Osgood and others, appellants herein, in which he prayed for an injunction to prevent them from interfering with him in his business as branch pilot (pp. 148 et seq.), which was granted (p. 151), which suit was defended by the counsel for appellants here (pp. 154, 155), and was prosecuted in good faith by said Pliny Cox until after the institution of the present suit, when, on the 12th March, 1881, Pliny Cox entered into a consent, witnessed by the counsel of the libellants here, by which he agreed that judgment should be entered against him, which was accordingly done (p. 155), notwithstanding the oath that he took to obtain the injunction—p. 151.

VII.

The only reasonable deduction to be made from these series of record facts is, that after the institution of this suit, the appellants bought off all of complainant's men, by some inducements of a disreputable kind, and no attempt is made to explain away such a deduction, and, therefore, this must be held true regarding Falconi, Follett and Pliny Cox.

But so far as Pliny Cox is concerned we have direct and positive evidence, in addition to that deduction, which is undisputed, and must carry conviction to every mind.

Robert Wilson, himself a branch pilot, testifies that Pliny Cox was connected with the steamboat Mary Lee, in the branch piloting business (p. 227).

"Q. Do you know how he came to leave the Mary Lee? A. Well, sir, I went and asked him to leave it.

"Q. Who were you acting for? A. For myself, at the time, and the Pilots' Association together.

"Q. What inducements did you offer him to leave the Mary Lee? A. I offered him whatever sum they were paying him, the owners of the Mary Lee were paying him, at the time.

"Q. How much was that? A. One hundred and fifty dollars a month to go quartermaster on the Underwriter (the Pilots' Association boat).

"Q. Did he leave her? A. He left the Mary Lee; yes, sir.

" Q. Did he go quartermaster on the Underwriter? A. Yes, sir."—See p. 227.

" Q. Was Cox paid his $150 a month? A. Yes, sir.

" Q. Who paid him? A. I believe Captain Francis paid him.

" Q. With whose money? A With the association's money."

And on cross examination :

" Q. Was that matter ever ratified by any meeting of the association? A. I don't know that it was. It was generally understood, though, by all the pilots, all the members, but I don't know that there was any particular meeting called to that effect or for that purpose."—p. 228.

Bernard Michel, another branch pilot, fully corroborates this evidence (p. 230), and *A. A. Douglass*, another branch pilot, a witness for the libellants, was forced, under cross-examination, to admit the truth thereof (pp. 334, 335 and 336); and all of these three men, Robert Wilson, Bernard Michel and A. A. Douglass, are appellants in this suit, as appears from the appeal bond at p. 343 of the record.

Why should we comment further?

VIII.

After the construction of the Eads jetties had well progressed in this South Pass of the Mississippi river, where theretofore there had only been seven or eight feet of water, and where a branch-pilot was never seen; when the success of this wonderful feat of engineering

was assured, and when, of course, the commerce of New Orleans took naturally to this great and safe highway, the branch-pilots, to perpetuate the tax they had theretofore been on the commerce of the world, which could now do without them, organized themselves, on 27th May, 1879, into an association which they called a partnership, (p. 20,) and for the avowed purpose "to mutually protect the common interest of the said partners in the pursuance of their profession as branch-pilots of the port of New Orleans," (p. 21,) *all of the branch-pilots* were members of this association, except Caldwell who had never acted as a branch-pilot; Conrad who was sick and had not piloted for three years; Clark, who was sick and incapacitated and "paid off;" Dows, who had not been seen for a number of years; Davis, who was in New York and had not piloted for six or seven years; Elwell, who was down in Texas and never did any piloting; and Woods, who was blind, (see testimony of Douglass, pp. 330 to 332); so that really all who were capable of acting were members of the association and are the appellants here.

These parties claim the right to organize such a society under section 2707 of the Revised Statutes of Louisiana, which provide, that: "The duly licensed branch-pilots of the port of New Orleans, may, for the furtherance of their interests, form themselves into one or more *voluntary* private organizations."

But the organization that they formed was and is such a one as no law that could be passed by the State of Louisiana could authorize or justify; it formed

a joint stock company which was not authorized (Art. 5, p. 21,) it prohibited each of its members from entering into or carrying on the pilot business except for the association, whether for his own account or in conjunction with others, under the penalty of five thousand dollars (Art. 7, p. 23); this amounted to a restriction upon commerce, by monopolizing or attempting to monopolize the pilot business, and preventing the pilots from competing with each other; such a society could not be called a "*voluntary*" organization, while its provisions prevented by such severe penalties any of its members from separating from it. Reference to this point is made here to show the utter hollowness of the claims and professions made by these branch-pilots to gain the sympathy of this Court.

It is urged, on the other side, that the rates of pilotage are fixed by law, which is true, but it is also urged that no larger or smaller fees can lawfully be exacted or contracted for, which is not correct; Section 2703 of the Revised Statutes of Louisiana, fixes the fees to be charged, but there is no prohibition against any pilot taking less, and opposition is to be encouraged in all lines of trade, and laws are not be construed to suppress it; besides, it must not be forgotten that the rates in question were fixed by law at a time when there was no canal leading from the river to the sea; at a time when, as we have shown by the testimony first quoted hercin, these branch pilots had to cruise many miles at sea, and spend much time upon the vessels they piloted, whereas, now, they board the vessels as they approach

the sea end of the jetties, accompany them for a mile or two, and leave them; then, there was a difficult bar to pass, which the pilots had to study, and great skill was required of them; now, according to all the witnesses they have only to steer their vessels after the tug-boats towing them, the task of an apprentice mariner.

IX.

Our opponents claim in their brief, that any Act of Congress which repealed the compulsory pilot laws governing the port of New Orleans, if applied to that port alone, and which did not repeal all compulsory pilot laws in all of the ports of all the States would be absolutely null. While we do not admit by any means all that is thus claimed, it does not at all apply to the case at bar. We do not assert that the pilot laws of Louisiana relative to the port of New Orleans are entirely repealed; they still apply as they always did to those passes and channels and bars that existed when they were enacted; these branch pilots have still the same rights and authority they ever had over the Southwest Pass and Pass a l'Outre, where alone they ever pretended to exercise their calling before the building of the jetties and the construction of the canal in the South Pass but it is preposterous to say that after this government digs a canal for the relief of commerce that these branch pilots should claim all the benefit of it for themselves, and thus in a great measure undo at least a great part of the benefit that Congress conferred upon commerce; they ask your Honors to decide that the

enormous expense incurred for the building of the jetties was for their account, and enrichment, and to relieve them from the toils and labor expected from them on account of their appointment; all of which would be alike unjust and absurd.

We pray that the decree may be affirmed.

Respectfully submitted,

JOSEPH P. HORNOR,

Of Counsel.

New Orleans, 25th March, 1886.

118-389

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1322.

THE UNITED STATES, APPELLANTS,

vs.

JOHN M. LANGSTON.

APPEAL FROM THE COURT OF CLAIMS.

FILED APRIL 16, 1886.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1322.

THE UNITED STATES, APPELLANTS,

vs.

JOHN M. LANGSTON.

APPEAL FROM THE COURT OF CLAIMS.

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1 I. *Petition.—Filed August* 18, 1885.

In the Court of Claims. December term, 1884.

JOHN M. LANGSTON
v.
THE UNITED STATES. } No. 14686.

I. *Petition.—Filed August* 18, 1885. *A. H.*

To the honorable the Court of Claims:

The claimant, John Mercer Langston, respectfully shows to this honorable court:

The claimant was, on the 28th day of September, in the year 1877, duly appointed minister-resident and consul-general of the United States to the Republic of Hayti, and held that office continuously from the time of said appointment till and including the 24th day of July, in the year 1885. By various acts of Congress, in force during the claimant's term of service, to wit: Section 1675 of the Revised Statutes of the United States; an act approved March 3, 1875, chap. 153; an act approved June 4, 1878, chap. 155, and an act approved January 27, 1879, chap. 28; the salary of the claimant's office was fixed at seven thousand five hundred dollars ($7,500) a year.

2 Notwithstanding these provisions of law, the claimant was only paid at the rate of five thousand dollars ($5,000) a year, during the last three years and twenty-four days of his service, to wit, from the first day of July, 1882, to the 24th day of July, 1885. This deficiency in the payment of the claimant's salary was caused by the insufficiency of the appropriations made by the Congress of the United States, who only appropriated for the period aforesaid at the rate of five thousand dollars a year; but as he is advised, the insufficiency of the appropriations so made constitutes, according to the decisions of this court, no bar to his recovering in this court the full compensation provided by the general and permanent law. The claimant, therefore, claims the difference between his salary, at the rate of $5,000 a year, appropriated and paid to him as aforesaid, and the salary of $7,500 a year, provided by the general and permanent law. Said difference, for the aforesaid period of three years and twenty-four days, amounts to seven thousand six hundred and sixty-six dollars and sixty-six cents ($7,666.66), which amount he claims.

No action has been had on this claim in Congress or by any of the Departments.

The claimant is the sole owner of this claim and the only person interested therein; and no assignment or transfer of this claim, or of any part thereof or interest therein, has been made.

The claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets. The claimant is a citizen of the United States, and has at all times borne true allegiance to the Government thereof, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and the claimant believes the facts as stated in this petition to be true.

And the claimant demands judgment for seven thousand six hundred and sixty-six dollars and sixty-six cents ($7,666.66).

GEORGE A. KING,
Attorney for Claimant.

3 DISTRICT OF COLUMBIA:

John M. Langston, being duly sworn, deposes and says:

I am the claimant in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge and belief.

JOHN M. LANGSTON.

Subscribed and sworn to before me this 18th day of August, 1885.

[SEAL.] JOHN W. P. MYERS,
Notary Public.

4 II. *Traverse.—Filed August* 26, 1885.

And now comes the Attorney-General on behalf of the United States and answering the petition of the claimant herein denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations and asks judgment accordingly.

ROBERT A. HOWARD,
Assistant Attorney-Gen'l.

5 III. *Findings of fact and conclusion of law.*

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I.

The claimant was, on the 28th day of September, 1877, appointed minister resident and consul-general of the United States to Hayti, and held that office until the 24th day of July, 1885.

II.

The compensation paid to the claimant was at the rate of $7,500 a year up to and including June 30, 1882. From and after July 1, 1882, to the termination of his official service, July 24, 1885, he was compensated at the rate of $5,000 a year only.

Conclusion of law.

Upon the foregoing facts the court finds as conclusion of law that the claimant recover the sum of $7,666.66.

IV. *Opinion of the court.*

DAVIS, *J.*, delivered the opinion of the court:

In 1862 provision was made for a diplomatic post in the Republic of Hayti, the salary being fixed, by reference to the diplomatic and consular act of 1856 (11 Stat. L., 52), at $7,500 a year. This legislation was in effect repeated in the Revised Statutes and recognized in the several appropriation bills from the establishment of the post to the year 1882, when $5,000 was allowed as salary; this sum only was appropriated in the succeeding years. The claimant from 1877 to 1885 was minister resident and consul-general at Port-au-Prince, and now claims the difference between $7,500 and $5,000 per annum for the period during which he occupied the post after the appropriation act of 1882 took effect.

The act of 1862 (12 Stat. L., 421), and the later act of 1866 (14 Stat. L., 225), are in effect incorporated in that section of the Revised Statutes (1683) which provides for a minister resident and consul-general to Hayti, "who shall be entitled to a salary of seven thousand five hundred dollars a year," so that, but for subsequent legislation, no doubt could
6 exist as to the claimant's right to recover. The force of the several appropriation acts of 1882, 1883, 1884, and 1885, therefore, becomes vital, and we have to decide whether they repealed the existing statutory provisions for this post, or simply operated in law as an insufficient provision for a salary legally due.

These acts are substantially the same in phraseology, following the usual form. Those of 1882 and 1883 open with the clause—

"That the following sums be, and they are hereby, appropriated for the service of the fiscal year [ending on the 30th of the succeeding June], out of any money in the Treasury not otherwise appropriated, for the objects hereinafter expressed, namely:"

There are some verbal changes of this clause in the acts of 1884 and 1885, which, however, do not alter its meaning or effect. Following this come the numerous specific appropriations, among them one for "ministers resident and consul-general to Liberia, Hayti [and other countries], at $5,000 each."

In neither act is there any repealing clause, such as is often found in similar legislative proceedings, as, notably, in the diplomatic and consular appropriation acts of 1878 and 1879, and this court has frequently held that an insufficient appropriation does not, alone, discharge existing legal liabilities. In one case (French's, 16 C. Cls., 419) Congress appropriated but $3,600 to pay a salary fixed by law at $5,000, and the court decided that such an appropriation, with do declaration that the sum should be in "full compensation," and "with no clause repealing acts inconsistent or in conflict" with the provisions of the appropriation act did not affect the claimant's right to the salary established by law. (Freedman's Bank Case, 16 C. Cls., 29; Graham's Case, 1 C. Cls., 380; Dyer's Case, 20 C. Cls., 171; Collins's Case, 15 C. Cls., 22; Briggs' Case, Ib., 48.)

The legislative department of the Government could have reduced the compensation to be received by the incumbent of the post at Port-au-Prince, but could only do so by such action as worked a repeal of existing law. Nothing to that effect appears in the appropriation acts now under examination, and unless we should hold that a naked appropriation

of money, less than that called for by a statute, by itself repeals that statute, the contention of the defendants in this case cannot be sustained. It has been the custom of Congress, when desiring by appropriation bill to reduce salaries fixed by law, to include a repealing clause, or at least a clause to the effect that the salaries set out in the bill shall be taken "in full satisfaction." No such clause, and nothing indicating such an intention on the part of Congress, appears in these acts.

The law does not favor a repeal by implication or a resort to the proceedings prior to the passage of a bill where the language is not ambiguous. Yet, if we turn to the intent of the legislative branch of the Government, as we are urged to do by the defendants, and in ascertaining that intent examine the proceedings of Congress, it appears that a repealing clause was attached to one bill at least—that for 1884–1885—by the House of Representatives, but failed to become part of the law as finally approved, thus negativing, as to that act, any assumed desire to interfere with existing statutory rights. (Cong. Rec., 48th Cong., 1st sess., part 4, p. 4195, and part 5, p. 4953; 23 Stat. L., 227–236.)

7 The salary of the post was specifically fixed over twenty years ago; it was in effect confirmed by the Revised Statutes and by the acts of 1878 and 1879, and the acts since 1881, not having repealed these provisions of the law, must be held to have simply made an insufficient appropriation to fulfill a statutory demand.

Public officers in accepting their positions have a right to rely upon the salary fixed by permanent general laws, and are not to be cut off by insufficient annual appropriations unless accompanied by a repeal of the permanent law either expressly or by the clearest implication.

Judgment will therefore be entered in favor of the claimant for the sum of $7,666.66.

8 V. *Final judgment of the court.*

JOHN M. LANGSTON
v.
THE UNITED STATES. } No. 14686.

At a Court of Claims, held at the city of Washington on the 11th day of January, A. D. 1886, judgment was ordered to be entered up as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the said John M. Langston do have and recover of and from the United States the sum of seven thousand six hundred and sixty-six $\frac{66}{100}$ dollars ($7,666.66).

9 VI. *Application for and allowance of appeal.*

From the judgment rendered in the above-entitled cause on the 11th day of January, 1886, in favor of claimant, the defendants, by their Attorney-General, on the 25th day of January, 1886, make application for, and give notice of, an appeal to the Supreme Court of the United States.

ROBERT A. HOWARD,
Ass't Attorney-General.

Filed January 25, 1886.

And now, to wit, January 25, 1886, it is ordered that the appeal be allowed as prayed for.

WM. A. RICHARDSON,
Chief Justice.

10 In the Court of Claims.

VII.

JOHN M. LANGSTON
vs.
THE UNITED STATES. } No. 14686.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the opinion of the court, of the final judgment of the court, of the application of defendants for allowance of appeal to the Supreme Court of the United States, and of the allowance of said appeal.

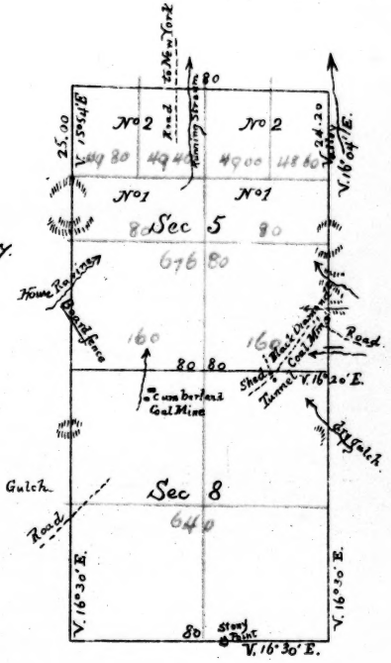
In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 16th day of April, A. D. 1886.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsed on cover:) No. 1322. The United States, appellant, vs. John M. Langston. Court of Claims. Filed April 16, 1886.

Township 1 North Range 1 East Mt Diablo Mern

No. 203
Mullan & Avery
vs.
The United States.
} p. 177.



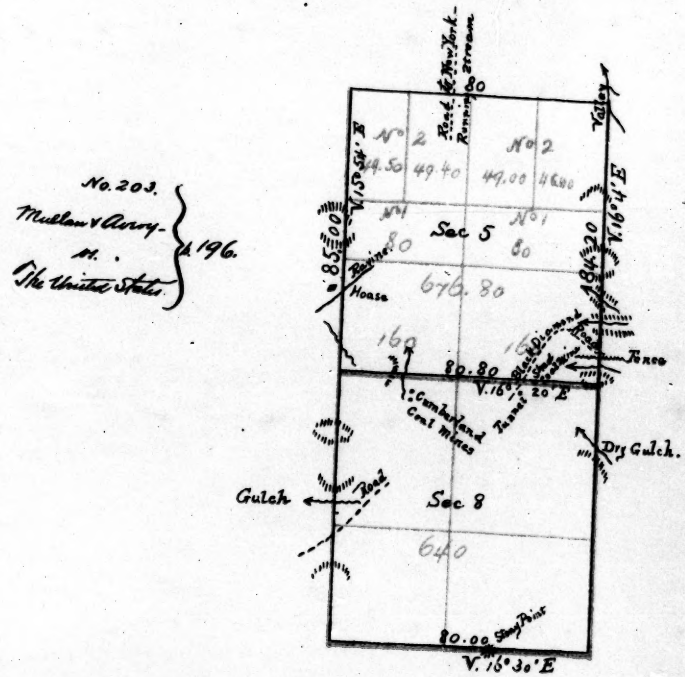
I hereby certify that this is a full, true and correct copy of Plat of Township 1 North, Range 1 East, Mount Diablo Meridian, filed in this office, May 17. 1864. so far as the same pertains to Sections 5 and 8 of said Township.

U. S. Land Office, San Francisco, Cal.
the 3d day of March, A. D. 1879.

Wm. R. Wheaton.
Register.

Compl'nts
Exhibit "A" Bost.

Township No. 1 North. Range No. 1 E Mt. D. Mer.

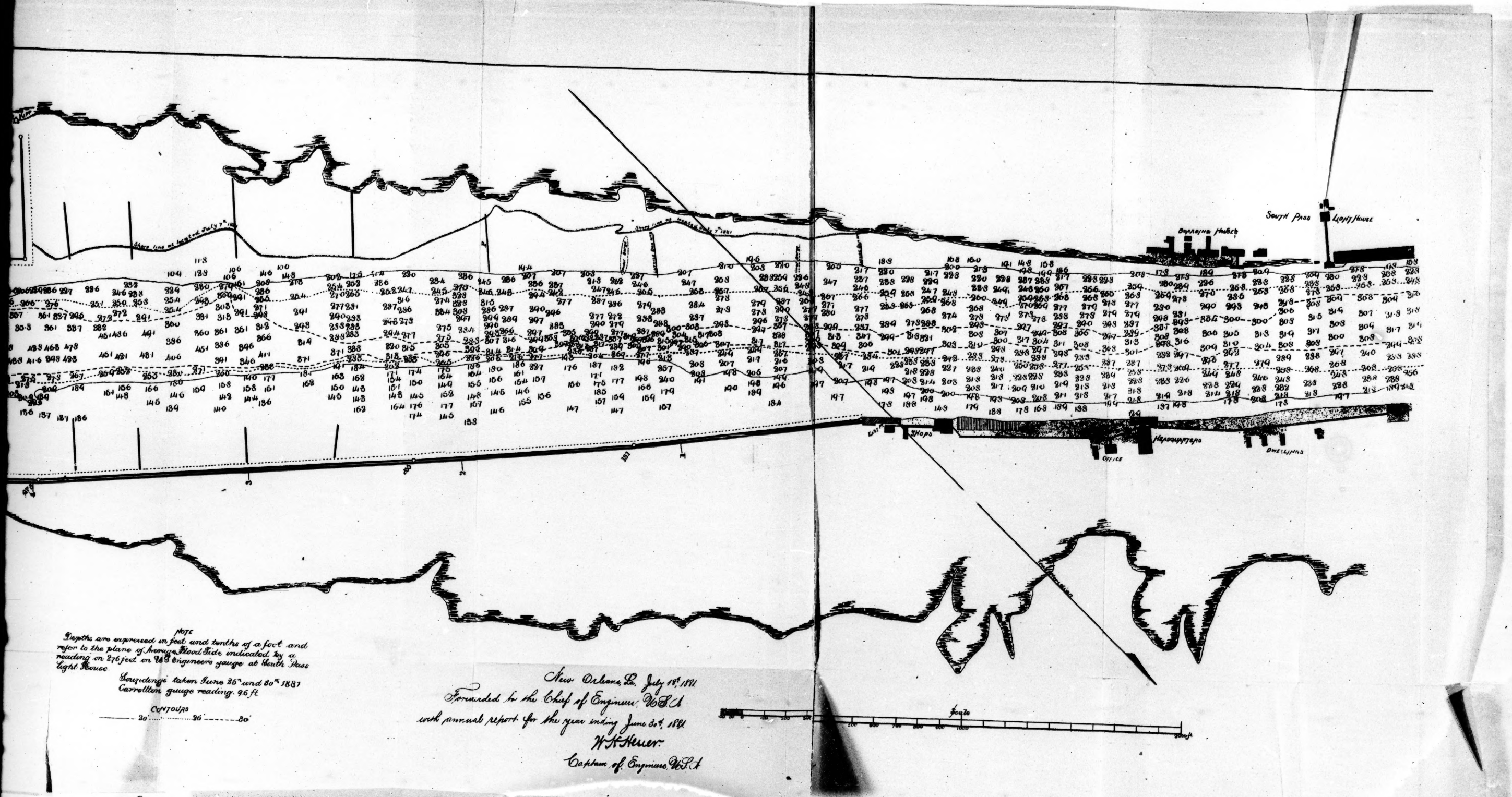


I hereby certify that this is a fule true and correct copy of Sections Nos. 5 & 8 as included in the Plat of Township 1 N. R 1 E. M. D. M. on file in this office.

U.S. Land Office, San Francisco, Cal.
September 10th. 1879.

Louis R. Wheaton.
Register.

Couple #4
Exhibit "B" Thompson



Note

Depths are expressed in feet and tenths of a foot and refer to the plane of Average Flood Tide indicated by a reading on 27.6 feet on the U.S. Engineers gauge at South Pass Light House.

Soundings taken June 25th and 30th 1881
Carrollton gauge reading 9.6 ft.

CONTOURS

——— 20' ..... 26' ——— 30'

New Orleans La. July 18th 1881
Forwarded to the Chief of Engineers U.S.A.
with annual report for the year ending June 30th 1881
W. H. Heuer.
Captain of Engineers U.S.A.